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TERRORISM LEGISLATION

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BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

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TERRORISM LEGISLATION

WEDNESDAY, MAY 7, 1986

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Richard G. Lugar (chairman of the committee) presiding.

Present: Senators Lugar, Helms, Murkowski, Pell, Zorinsky, Cranston, and Dodd.

The CHAIRMAN. This hearing of the Senate Foreign Relations Committee is called to order.

With the increasing terrorist attacks on Americans abroad, Congress has in recent years passed numerous pieces of terrorist-related legislation. The administration's proposed Embassy Security Program is one of the most important measures this committee will consider in protecting official Americans and their families overseas. During last week's hearing, the committee took a close look at the embassy security enhancement proposal. The committee continues to examine the proposal carefully in anticipation of a markup 1 week from today.

Today's hearing will examine the seven terrorism-related titles which were added to the embassy security bill passed by the House. In addition, the committee is pleased to have with us the distinguished Senator from Alabama, Senator Jeremiah Denton, who will testify on behalf of Senate bill 1941, a comprehensive proposal to clarify the manner in which economic sanctions are applied to state sponsors of terrorism. Senator Denton's proposal is an important one and merits a careful look by this committee. Senator Denton is on a tight schedule today and must leave after giving his testimony, but he has kindly agreed to respond to the committee's questions on S. 1941 in writing.

We also have with us the distinguished Senator from Pennsylvania, Senator Arlen Specter, who will testify on behalf of Senate resolution 190, a measure calling on the President to enter international negotiations to make terrorism a universal crime prosecutable in the United States.

The committee is also pleased to have with us an administration panel to comment on the legislation under consideration today. Before turning to Mr. Stephen Trott, Assistant Attorney General and head of the Justice Department's Criminal Division, and Mr. Parker Borg, of the State Department's Office of the Ambassador at Large for Counterterrorism, we will be pleased to hear from the Ambassador at Large for Counterterrorism himself, Mr. Robert

Oakley, who is just back from the Tokyo summit, suffering, I fear, from jet lag but prepared to report to us briefly on the accomplishments of that meeting.

We will now receive an opening statement by Senator Trible.

[The opening statement of Senator Trible follows:]

OPENING STATEMENT OF SENATOR TRIBLE

Senator TRIBLE. I'm pleased that we have scheduled this hearing today. The timeliness and urgency of the topic we are considering here puts it at the very top of our foreign policy deliberations. Its significance, given recent events, can not be overestimated.

Political terrorism has become a distinctive disorder of the modern world. It originated as a term and as a practice less than two centuries ago and has come into the spotlight of global conflict in our own lifetime.

Not all terrorism is the same however, the practitioners of terror can, in fact, be categorized on the basis of their aspirations. These are psychotic killers, revolutionary terrorists, barbarian regimes, and there is what we now call state-supported terrorism.

Last year, acts of state-sponsored terrorism rose from 70 the previous year to 97. Iran and Libya were the most egregious offenders, being involved in all but five of these acts. The governments of the Soviet Union, Cuba, and Nicaragua have also supported terrorism though they have been more conscious of the benefits of concealing their involvement, to mislead western opinion and forestall a response by the democracies.

I think that two analytical points should be emphasized here. The first is that state-sponsored terrorism is a new form of warfare. Rather than engage in armed conflict to achieve political ends, those who underwrite terror seek to achieve their goals by sapping the will of their "enemies" through wanton and random acts of violence.

The second point is that, as horrifying as terrorist acts are, they are a demonstration of weakness not strength. If terrorists could achieve their goals by traditional use of military force, they would do so. It seems clear that if they had the capability the PLO would destroy Israel by means of conventional arms and that Qadhafi would seek to expand his domain in the same fashion.

They are unable to do so, and therefore they seek to wage war in unconventional ways.

For its part, the United States policy on international terrorism should be unambiguous: We condemn terrorism in all its forms no matter where it occurs. The United States does not negotiate with terrorists; we will not pay ransoms nor will we alter our policies to meet terrorist demands.

I say in conclusion, that the shift to transnational terrorism is truly a maneuver of the desperate. I believe it to be the result of a complex confluence of forces ranging from the regular failure of revolutionary campaigns, to the recognition of the potential for exploiting the mass media, to ominous political trends and regional politics in the world at large. Unfortunately, there has to date been little reason to suppose that present terrorists will in the immediate future shift their assumptions or lose their aspirations. But equally apparent today, as a result of our president's actions in the last weeks, the United States is no longer hostage to the whims and threats of madmen and evil regimes that choose to live by the sword.

We must and will stand firm. Terrorism is never just. We in the Judeo-Christian tradition can never, under any circumstances, believe in the justified, deliberate killing of innocent individuals. Civil nations must put an end to the scourge of terrorism or the terrorists will have won. They will have converted the world citizenry to their own nihilistic vision: not a world where nations with effort can compose their differences; but rather a Hobbesian world, a lawless world, a world where no one can be trusted, a world where everyone is sentenced to a perpetual war of all against all.

I am particularly enthused that you have called this hearing Mr. Chairman, and that Senators Denton and Specter have taken the time to be with us this morning.

The CHAIRMAN. Before turning to today's witnesses, I would like to ask first if the distinguished ranking minority member of the committee, Mr. Pell, has an opening statement.

Senator PELL. Thank you, Mr. Chairman.

Today our committee continues its hearings on antiterrorism legislation. I am particularly interested in titles VIII and IX of the House-passed version. Those sections are designed to provide compensation for victims of terrorism and to enhance the security of our ports and maritime facilities. As a retired captain in the Coast Guard Reserve, I am particularly interested to see that the House of Representatives has seen fit to provide the Coast Guard with a large and constructive role in our Nation's efforts to combat terrorism.

I am also interested in those aspects of the House bill which provide compensation with increased benefits for those individuals who, because of their relationship to the U.S. Government, have been victimized by acts of terrorism. I hope the administration witnesses will, when the time comes, focus and provide their views on these specific titles.

The CHAIRMAN. Thank you very much, Senator Pell.

Senator Denton, we are pleased to have you. Would you please proceed with your testimony?

STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM ALABAMA

Senator DENTON. Thank you.

Mr. Chairman, distinguished members of the committee, I greatly appreciate the opportunity to appear before you today as you consider various legislative proposals designed to combat international terrorism. I congratulate and commend you, Mr. Chairman, and the members of the committee for your leadership in focusing the committee's attention on these measures. I know that you and the other members recognize that appropriate, reasonable legislation is an indispensable element in the development of a comprehensive U.S. policy for combating terrorism.

In that connection, Mr. Chairman, I am here today to urge the committee to support S. 1941, the International Terrorism Deterrence Act, which I introduced on December 13, 1985. The bill is cosponsored so far by, among others, a distinguished member of this committee from Alaska, Senator Murkowski, and I appreciate his support.

I see a clear and present need for S. 1941, which is aimed at curbing the activities of nation states in support of international terrorism. As you know, terrorism is a form of low-intensity warfare and is being used to erode the influence and strategic position of the Western democracies and to enhance the power of the Soviet Union, its client states and allies.

Over the past 5 years the Judiciary Subcommittee on Security and Terrorism, which I chair, has held numerous hearings on terrorism and related subjects. The hearings have yielded abundant and conclusive evidence of the existence of a network, a global unity in the sources of support, strategy, tactics, and goals of international terrorists. For example, a hearing held by the subcommittee on February 19 of this year clearly disclosed the existence of a "Radical Entente" of various nation states, including Libya, Iran, Syria, Cuba, and North Korea.

The "Radical Entente" has, since the early 1980's, attempted, at least loosely, to coordinate a worldwide strategy designed to expel U.S. military, political, and economic presence and influence from key areas of the world. Terrorist activities are, of course, an important part of this radical explusion strategy, as shown by the events of recent weeks, which have highlighted the deep involvement of Libya, in particular, in supporting and facilitating acts of terrorism against the United States and its allies.

The area in which most of the Radical Entente states operate is important in the larger context of Brezhnev's two expressed goals, one of which was the denial to the West of access to the treasure trove of oil in the Mideast.

Hearings before my subcommittee have also documented that terrorism is a genuine threat in our own hemisphere. For over two decades, Cuba has sought to destabilize countries throughout Latin America. Most recently, Nicaragua was seriously implicated in the terrorist assault and massacre at the Colombian Palace of Justice. The forging of a link between terrorism and international drug trafficking, especially in Central and South America, has ominous and horrifying implications which reach into every American home and cut at the very fabric of our society.

I believe that the media and the attention of our Government has not been focused frequently enough on what is going on in Central and South America—the destabilization of governments, the kind of situation which led Ambassador Tambs to become frightened, as any human being would, when Justice Minister Lara, his friend, and the man who was trying to defeat narcoterrorism in Colombia, was brutally murdered by terrorists. The situation is horrifying there.

Furthermore, the joint hearings held in May 1985 by this committee and the Judiciary Committee disclosed, graphically and comprehensively, the interrelated nature of this international terrorist network and the essential role of state sponsors in that network.

The evidence clearly shows that terrorist groups do not operate alone and that their effectiveness is considerably influenced by the material assistance, training, and sanctuary that they receive from state sponsors. Yet there has been very little effort to discourage such support, even though it is every bit as despicable as the terrorist acts and organizations themselves.

The International Terrorism Deterrence Act seeks to impair the life support system for international terrorism. First, it would require the Secretary of State to identify those foreign states that provide support for international acts of terrorism. The resulting designations would be subject to annual review and update. Only a determination that a particular nation state has ceased its support for international terrorism would qualify it to be removed from the list.

Upon a finding that a state supports terrorists, the President would be required to impose a range of sanctions against it. All or a portion of the sanctions could be waived if the President notifies the Congress that such a waiver would be in the national security interests of the United States.

The sanctions are designed to convey our displeasure and to establish clear penalties for state support of international terrorism. They include the suspension of any U.S. assistance or preferential trade treatment, a mandate for U.S. representatives to oppose loans through multilateral lending institutions, and termination of access to Export-Import Bank loans.

Furthermore, the bill would require the President either to prohibit the importation of any products from a country identified as a supporter of terrorism or to impose an additional duty on its imports. I recognize that unilateral U.S. action to restrict imports may be considered by some as a controversial course, but the dangers posed to life and liberty by international terrorism have become too great. The countries that encourage such criminal behavior must be made to feel the full weight of our condemnation. In those cases where we do not now provide bilateral aid or preferential trade treatment, a restriction on imports might be the only penalty we are able to impose.

Furthermore, the right to restrict imports for reasons of national security has long been recognized by the international community. I believe that the time has now come to state explicitly that the Congress regards international terrorism as a clear threat to our national security which requires extraordinary unilateral action in some cases. To the extent that we are able to deny export revenue to a state sponsor of international terrorism we diminish its ability to destabilize the western world through intimidation and violence.

Mr. Chairman and members of the committee, the bill also makes clear that acts of international terrorism are an "unusual and extraordinary threat against the national security, foreign policy or economy of the United States" within the meaning of section 202 of the International Emergency Economic Powers Act. In 1979, in response to the Iranian seizure of the American Embassy and its occupants in Iran, President Carter exercised his authority under that act to freeze Iranian assets in the United States. I believe that the threat of further use of that authority could help to deter states from sponsoring terror or indirectly deny to those countries the benefits of investing or otherwise locating some of their resources in the United States.

As recent events in Libya have shown, for sanctions to be truly effective against a state that supports terrorism, sanctions must include some effort to restrict or eliminate private economic transactions between American business interests and those of the offending state, particularly where the host government receives substantial economic benefit, and most particularly where it receives no U.S. Government aid, so that the only types of aid which can be restricted are private commercial transactions.

It is certainly my view that section 203 of the International Emergency Powers Act enables the President to proscribe commercial activities. Since section 5 of my bill specifically triggers those IEEPA powers to combat acts of terrorism against citizens, property, or interests of the United States, I feel confident that my bill addresses the issue. The committee is, of course, invited to examine that as well as all of the other details of this bill and develop it as they see fit.

S. 1941, however, also requires the President to negotiate with our allies to obtain an agreement that they would impose similar sanctions. Since 40 percent of all terrorist acts are now aimed at Americans, American facilities, or American interests, it is appropriate for the United States to lead the effort; but the history of sanctions demonstrates that the most effective action is coordinated action. I believe that a joint effort to ostrasize and penalize those nation states that support international terrorism is long overdue, and I hope that the President will pursue this option vigorously with the full support of Congress.

In that regard, I am sure we all are encouraged and pleased by the joint communique on terrorism from the Tokyo summit. Ambassador Oakley is here this morning and was at the summit. I believe the joint communique demonstrates that there is an emerging consensus among our major allies that national and international responses must be directed at those states that support international terrorism. I applaud President Reagan for his leadership in Tokyo on the matter.

In conclusion, Mr. Chairman, S. 1941 contains another important provision. It would establish a trust fund, to be known as the "Antiterrorism Trust Fund," which would be administered by the Secretary of the Treasury. The Secretary would be authorized to replenish the trust fund from revenue arising from any antiterrorism import duties, and it would be used to combat terrorism and to compensate its victims. It seems entirely appropriate that those states that finance terrorism should also make restitution to the victims.

Mr. Chairman, despite all the discussion about international terrorism that has taken place on the Senate floor and in the Halls of the Congress, we have not yet done much to stem its growth. I therefore ask that the Committee on Foreign Relations consider on an urgent basis S. 1941, the International Terrorism Deterrence Act, and to help make it law at the earliest possible date.

The ideas contained in this bill have come from many sources. We have tried to polish and coordinate them and put them together in an omnibus approach. The bill is an attempt to target the source of international terrorism, those states that provide the material aid, the training, the sanctuary and the encouragement without which terrorists could not operate.

I thank you, Mr. Chairman, for hearing me this morning and giving me this opportunity, and I thank the members of the committee for listening.

The CHAIRMAN. Thank you very much, Senator Denton. We appreciate your personal appearance and your leadership in this overall area of legislation.

Before you leave, I'd like to call upon Senator Helms, who wishes to make an opening comment and I think also a commendation of your efforts.

Senator HELMS. Mr. Chairman, I thank you very much. I must leave to preside over the Agriculture Committee. It is a little difficult to be two places at once. But I delayed the convening of that meeting, Senator Denton, so that I could come here and express my gratitude to you both as an American and as a Senator for the way

that you have taken the lead in trying to alert this Congress, and this country, to the perils of terrorism.

I sense that for a great while that not too much attention was focused on it. You may not have been a voice in the wilderness, but I say to you, Senator, that your efforts have had a remarkable impact and I wanted to compliment you.

And furthermore, Mr. Chairman, if there is anybody in the Senate who understands how terrorists work, it has got to be Jerry Denton. We all know—sometimes we forget—that here is a man who served his country under the most adverse of circumstances—that is, as a prisoner of war of the Communists in Vietnam. I shall never forget that morning, Senator Denton, when you came down from that airplane and the first words you said were "God Bless America."

We have here, Mr. Chairman, a great patriot and a great Senator, and I want him to know that all of us are very proud of him. I wish I could stay for Senator Specter's comments, but I will read them, and I shall now go to my other committee, which is also your other committee.

The CHAIRMAN. Indeed.

Senator HELMS. Senator Lugar and I have quite a difficulty. He is the ranking Republican on the Agriculture Committee and he has to miss the Agriculture Committee meetings and I have to miss some of the Foreign Relations Committee meetings, but we work together on both.

Thank you, Mr. Chairman, very much, and thank you, Senators.

Senator DENTON. Mr. Chairman, may I thank Senator Helms in a word or two of response? I did not deserve the undue attention I received as a result of being the first prisoner to happen to step off the aircraft, but the expression "God Bless America," which was spontaneous and unplanned to some degree, has become materialized in blessings, in my view, and three men—Senator Lugar, chairman of this Foreign Relations Committee, with all of the complexity, delicacy and importance of that role; you, Senator Helms, as chairman of your committee and as an important member of this committee; and Senator Specter, who has worked very closely with me on terrorism—are all evidences of that blessing.

I just want to acknowledge that and thank you for your gracious statement.

The CHAIRMAN. Thank you very much, Senator Denton. Thank you, Senator Helms.

Senator Specter, we are honored that you are here today and we look forward to your testimony.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. I commend you and this distinguished committee for taking up this important subject. I commend my distinguished colleague, Senator Denton, for his leadership and initiative, and I think S. 1941 is a bill which ought to be enacted promptly and moved forward and enacted into law.

The area of economic sanctions, I think, is very, very important. It is my personal view that the United States has come late to the demand on economic sanctions, but finally we have, that we have to press our NATO allies and Japan to help us on the economic sanctions. I commend the President and the administration for the successes of the economic summit, but I would prefer to have seen a joint communique from the participating nations that they would impose economic sanctions on countries like Libya.

I understand the difficulties in working that out and the issue that confronts some of our NATO allies and Japan on not moving for economic sanctions. But I believe that is an area that we have to pursue with even greater force than we have at the present time.

Mr. Chairman, I am pleased to be here today to testify in support of Senate Resolution 190, to define terrorism as an international crime and to establish a Nuremberg-type court for the trial of international terrorists. This resolution was introduced almost 1 year ago, on June 27, 1985, and it follows a similar resolution which I had introduced almost 2 years ago, Senate Resolution 473, in the 98th Congress on October 3, 1984, which was a response to the murder by the Libyan diplomat of the British policewoman, an effort to revive the Vienna Conventions to redefine diplomatic immunity, which should not include murder, hardly a part of diplomacy.

And Senate Resolution 190 takes a broader look at terrorism in an effort to approach it in a principled way in accordance with established principles of international law and established principles of criminal law to deal with terrorists as criminals and to establish appropriate tribunals to initiate prosecutions, to apprehend terrorists, to convict them and to punish them.

Mr. Chairman, it has long been recognized in international law that there are certain international crimes, such as piracy. Early on it was decided that piracy was so important in the international field that a pirate could be prosecuted any place he could be found, contrary to the general rule of criminal jurisdiction that a defendant could be tried only in the jurisdiction where the offense took place. Where you have international law which makes piracy and torture international crimes, certainly terrorism ranks as of equal if not greater importance and ought to have a similar definition.

Mr. Chairman, I believe that it is important that the United States take a leadership role to have this kind of international action against terrorists because of the difficulty and perhaps impossibility of dealing adequately with terrorists in any other way. The alternative, Mr. Chairman, is for the United States to assert jurisdiction and to try terrorists in the U.S. courts, which I believe we should do at the present time, and in fact the Congress has enacted legislation in 1984 as part of the Omnibus Crime Control Act in certain limited areas involving hijacking and hostage taking.

Earlier I had introduced Senate bill 1429, which passed the U.S. Senate unanimously in February of this year, which expands the role of the jurisdiction of the U.S. courts to take jurisdiction to make it a violation of the laws of the United States where a U.S. citizen is assaulted, maimed, or murdered anywhere in the world, to close the gap to make it a violation of our law for the murder of

U.S. citizens, for example at the Rome and Vienna airports in December 1985, or the 241 marines who were murdered in Lebanon in 1983.

And there are some fascinating points of international law which come into play on these important subjects. It is lawful to take custody of a person anywhere in the world and bring him to the United States for trial. That principle was upheld in a rather dramatic case decided by the Supreme Court of the United States under the caption of *Kerr* v. *Illinois*, and it is worth a moment of attention because it is a surprising principle but an important principle.

Kerr was charged with fraud in the State of Illinois and had fled to Peru. Illinois authorities then went to Peru and took Kerr into custody without a warrant of arrest, without international extradition, brought him back to the United States for trial. He was convicted. The case went to the Supreme Court of the United States and the Supreme Court of the United States upheld that conviction, saying that it was appropriate.

You can call the Kerr procedure an arrest. You can call it an abduction. You can even call it a kidnaping. But it is in accordance with established principles of law to take that action when you deal with criminals. The United States had sought to utilize that procedure when we forced down the Egyptian airliner and took into custody the terrorists who had hijacked the *Achille Lauro*. Unfortunately, the United States was not able to obtain custody of those individuals because the Italians took them over, regrettably let the chief terrorist go. He fled to Yugoslavia, escaped, and only belatedly did the Italian authorities indict him.

It would have been a great day for world law had those terrorists been brought back to the United States for trial. At the present time, the three terrorists from Lebanon who hijacked the TWA plane have been indicted by the U.S. District Court for the District of Columbia, and that is a prosecution which I hope will go forward once we can gain custody of those individuals.

Mr. Chairman, in extensive proceedings before Senator Denton's Subcommittee on Terrorism we have had Judge Sofaer testify in support in special circumstances of the United States taking custody of terrorists in other countries as an appropriate remedy under international law. Secretary of State Shultz earlier this year testified before the Foreign Operations Subcommittee in response to my question that he approved of the use of moderate force to take terrorists into custody. And last week Attorney General Meese in response to a similar question posed by me at the Judiciary Committee hearing also approved that kind of a sanction.

We are seeing a rapidly evolving field in terms of the jurisdiction of courts under very unusual circumstances. A few weeks ago U.S. courts approved the extradition of a man charged with war crimes in 1944 to the State of Israel under highly unusual circumstances. The individual resided in the United States. He was charged by the State of Israel for crimes committed before Israel was a state. He was charged by the State of Israel for offenses which had not been written into law at the time those offenses were committed.

John Demjanjuk was extradited by U.S. courts to Israel, even though he could not have been tried in the United States under

similar circumstances and in accordance with our principles prohibiting ex post facto adjudications and ex post facto laws. But he was extradited to the State of Israel. That is an advance from the Eichmann proceeding, where Israel went to Argentina and brought Eichmann back to trial, prosecution, and execution, which was eminently just considering the offenses in the *Eichmann* case.

Mr. Chairman, we face an enormous problem internationally at the present time with Qadhafi. How to deal with Qadhafi is a very perplexing problem, and our Government has staged a retaliatory raid against Qadhafi's actions in a way totally warranted by international law.

I would suggest, Mr. Chairman, that consideration ought to be given to the preferable approach of treating Qadhafi as an international criminal, of using the force necessary to take him into custody, to try him, convict him, and to punish him, and I suggest that that principled approach, in accordance with international law principles precedented at Nuremberg, in accordance with principles of criminal law prosecutions, may well be a preferable way of zeroing in on the specific individual who is responsible for acts of terrorism as opposed to retaliatory raids, which, no matter how carefully planned or executed, must reach some of the innocent as well as those who are guilty.

It would be very difficult, although perhaps not impossible, to bring Qadhafi to trial in a U.S. court on the charge that he has participated in acts of terrorism, hostage-taking, hijacking, assassination and murder of American citizens. That is a more difficult approach because Qadhafi is a head of state. But there is no doubt that under an international procedure there would be a preferable course where the United States would be joined by other nations in that approach.

Many U.S. Senators have demanded the arrest and prosecution of Arafat for crimes committed in 1973. There has been a determination by the Department of Justice that the United States cannot proceed to prosecute Arafat for alleged murders of ranking U.S. officials in 1973 because of our principles prohibiting prosecution where we did not have a law in effect at that time, although such conduct if committed today would violate U.S. law. Our efforts to proceed against Arafat would be enormously clarified if we had an international tribunal which could bring Arafat to justice and remove him as an international terrorist.

Mr. Chairman, I suggest to you that those are the kinds of circumstances which would be possible under Senate Resolution 190 with the establishment of an international court to deal with international criminals like Qadhafi and Arafat and others. And absent such an international tribunal it may be that the only recourse by the U.S. Government will be to proceed against these international terrorists under our own law, which is perfectly proper in accordance with international principles. But it would be much better to proceed in an international tribunal.

Mr. Chairman, there is a report today in the news media where U.S. officials have denounced NBC for an interview with Abu Abas at a secret location, with concern being raised about publicity being given to Abu Abas and also concern about the potential responsibil-

ity for NBC to disclose the whereabouts of Abu Abas so that he can be taken into custody and prosecuted as an international terrorist.

If we were to proceed with Senate Resolution 190 and have a clearcut statement of international law defining Abas' conduct as an international crime, I would suggest to you, Mr. Chairman, that the circumstances and the conduct of NBC would be in much clearer focus on NBC's responsibility to disclose to law enforcement officials the whereabouts of that terrorist.

When you deal with the subject of the NBC conduct, it is a complicated field. There are statutes, for example, in this country—one in Pennsylvania that I have intimate familiarity with—protecting newsmen as to sources, creating a privilege against disclosure under certain circumstances. But even where you deal with the attorney-client privilege, which is one of the most sacred of all privileges, there are limits as to what an attorney can do in harboring fugitives or in cooperating with fugitives and in failing to make appropriate notification to law enforcement officials to bring fugitives within the purview and the reach of law enforcement officials.

Misprision of a felony is an established offense for those who are accessories or who harbor fugitives or fail to turn that information over. I do not wish at this time to make a final judgment even on a personal level as to NBC, but officials of the U.S. Government have been strong in denunciation of what they have done. But had there been an international definition of terrorists, international crime, NBC might well have responded differently.

Mr. Chairman, I very much appreciate the opportunity to present these views today. I totally agree with what Senator Denton said, that not much has been done on the fight against international terrorism. There is no problem confronting the world today which is more important than international terrorism. It is a form of warfare where the terrorists are at war and the law-abiding countries are not at war. It has required the United States to take very strong action 3 weeks ago on Monday on our raid in Libya, and it is the hope of all of us that we can find a way of dealing with international terrorism short of that kind of action, which has the potential for escalation and very, very serious potential which we would all like to avoid.

The way to deal with it, Mr. Chairman, is in accordance with principles that we have worked with for centuries, and that is to define the crime, to identify the criminals, to have warrants of arrest issued for them, as we have out of Federal court in this town for the terrorists who hijacked the TWA plane, to make surgical strikes, which Vice President Bush's commission has approved, as they approved S. 1429, the bill I referred to earlier, and this committee could make a major contribution by marking up the resolution, by recommending it to the Senate, and we could send it on to the President and put some real pressure on to make terrorism an international crime.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Specter.

Just to underline the thrust of your testimony, your resolution calls for the President to enter negotiations to create these definitions and to create a court. Your resolution does not contain specific legislation to deal, for example, with the problems that you as-

cribe to the NBC coverage of Abas. Rather your point is to try to encourage the administration to set a framework of law and of institution. Is that correct?

Senator SPECTER. Precisely, Mr. Chairman. I do not think it realistic for this Senator to propose a resolution, or this committee or the Senate, to establish an international framework. What we could do is to ask the President, with the weight of the Senate behind him, to enter into these international negotiations. There will have to be very careful consultation. There are many issues involved. It is something which is going to have to be worked out among nations, and it is going to be a give and take process. But we ought to get it started, which is what I am seeking here today.

The CHAIRMAN. Thank you.

We have been joined by Senator Zorinsky and Senator Cranston. Do either of you gentlemen have either questions for the witness or opening statements that are pertinent to what we are hearing?

Senator ZORINSKY. I do not, Mr. Chairman.

Senator CRANSTON. I do not, Mr. Chairman.

The CHAIRMAN. Thank you, gentlemen.

Thank you, Senator Specter, for coming. We appreciate your testimony.

Senator SPECTER. Thank you very much, Mr. Chairman.

The CHAIRMAN. The Chair would like to call now on Mr. Robert Oakley for his report.

Ambassador Oakley, we very much appreciate your appearance here. I know the arduous circumstances of travel that have brought you to this witness table this morning, but we are grateful for your participation in the hearing and would be pleased to hear your testimony or report at this point.

STATEMENT OF HON. ROBERT OAKLEY, AMBASSADOR AT LARGE FOR COUNTERTERRORISM, DEPARTMENT OF STATE

Ambassador OAKLEY. Mr. Chairman, it is a pleasure to be here. I wanted to be back and the Secretary and the President wanted me to come back, so I left a day early just so I could be here for this hearing. We all think it is very, very important, the work that your committee has been doing. I am glad that Senator Specter and Senator Denton were here because they have, as you say, contributed a great deal to this effort.

Before getting into the details on the summit, I would like to just mention a very important question that was not on the agenda in Tokyo but was raised with the President and the Secretary of State there. The same question had been raised 2 weeks earlier with the Attorney General when we went to The Hague and he met with his counterparts in the European Community; that is the question of extradition, and in particular the United States-United Kingdom Extradition Treaty.

The British and the Europeans, at The Hague with Ministers of Interior and Justice and at the meeting in Toyko with the Prime Ministers, attached a great deal of importance to the treaty, which is now pending before the Senate Foreign Relations Committee. They see this as more than a simple United States-United Kingdom matter or a question of extradition. They see it as a matter of

whether or not the United States has a single standard or a double standard in dealing with terrorists and whether or not we are willing to see the extradition of terrorists whom other countries consider important the same way in which we look for someone like Abu Abas, who was given an opportunity to show off in front of the TV recently and whom we would very much like to get back.

So I just wanted to make that clear to you and your colleagues, that it is a subject which they consider extremely important and they raised it in dealing with us.

The CHAIRMAN. If I may just interject a comment at this point. Indeed the committee sees it as a very important priority item also. I would simply report to you and to all who are witnesses at this hearing that vigorous efforts on both sides of the aisle in this committee are being exerted to see if we can come to a conclusion. We hope to do that in the next few days or weeks, but we will persistently keep at it until we have a favorable conclusion.

Ambassador OAKLEY. I want to support your efforts and tell you that they are quite important in the eyes of other governments. Their cooperation is absolutely essential if we are going to get to the bottom of international terrorism. As we all know, it takes place abroad. Thanks to the good work by our law enforcement agencies and thanks to something about the national character of the United States, we have very little international terrorism in this country. It is taking place abroad. It is affecting our citizens abroad and we need the cooperation of other governments if we are going to be able to get to the bottom of it.

And that is really what the summit was all about, in terms of dealing with terrorism; how we can get greater cooperation and together deal with the subject of international terrorism and begin to turn it back rather than have it continue to increase.

The statement which came out at the summit is a strong collective expression of the seven leaders. They see international terrorism as a very serious common problem which they intend to resolve, a determination to fight back, not to just accept terrorism. There were several words in there that are important, putting, really for the first time, the accent on govermments that sponsor terrorism, stating for the first time that terrorism has no justification. This means that although we recognize there are causes which cause people to turn to terrorism, it is no justification.

Just as you cannot have a sociological justification and let a criminal off free, you cannot say terrorists can be let off simply because there is something that causes them to be irritable. And finally the fact that terrorism must be fought relentlessly and without compromise. This is a position which the United States has pressed, particularly this administration, the idea of no compromise, no deals with terrorists. It is a view that has not always been shared by our allies and it is a point that we think is important.

Of course, as you all well know, words are one thing and actions are another. But we consider this statement to be very important because it shows such tremendous progress just in the last 3 weeks from what had been stated before by the same governments. The European Community, you recall, in January said the farthest they could go was to say that they were going to ban arms sales. They

were unable to say that Libya as a particular government and country was supporting terrorism.

Later, after our limited attack upon Tripoli and Bengazi in order to deter the terrorists from further attacks upon our own citizens, there seems to have been a sudden realization that the threat was greater than it had been previously perceived and that the need to work together was even more important than had previously been perceived. I think this has activated the process and we are going to get a lot more cooperation than we had before.

That does not mean it is going to stop terrorism all at once. There is no magic solution, as we all know. But it does mean that for the first time, at least in the 2 years I have been working on the problem with other governments, we are getting some cooperation which is going to be effective.

And more important perhaps than the words and more important than the sense of this statement on terrorism are the things that are taking place behind the scenes. The phrase "national measures," which is used in this Tokyo summit statement, has a great deal of significance. And whereas the governments, for a variety of reasons, were not all able to agree and therefore they could not put in this statement either economic sanctions or the use of military force under certain situations, the phrase "national measures" encompasses both of those.

And just as the United States was obliged to use military force in a limited, precise way as a national measure, the Prime Minister of Italy said that if they were attacked again by Libya, they would be obliged perhaps to do the same thing. But recognizing that this is something where at the moment there is no consensus for a collective action, it was left open in terms of "national measures."

The question of economic sanctions the European Community: some time ago took a formal decision opposing economic sanctions. In the face of that, there was no way that one could get economic sanctions endorsed in a statement where four of the governments came from the European Community.

But national measures are very important, and again let us take the example of Italy. The Prime Minister pointed out that on the first of January, shortly before our economic sanctions went into effect, there were 17,000 Italians working in Libya. Today there are 3,000. And for a variety of reasons and using a variety of measures, the economic and commercial relationships between Italy and Libya, which have been stronger than those of any other country, have been cut back drastically. I suspect they will continue to dwindle.

The same thing is true in different degrees for the other countries who were at the summit. So while being unwilling to endorse economic sanctions they are willing and they do see the need to apply economic pressure as well as diplomatic and political pressure in order to isolate Qadhafi to bring an end to his support for terrorism.

They also see that this whole effort to stop state-supported terrorism must be applied to other countries if we should find them providing the same sort of clear support that we have found in the case of Libya. So I think that there was a considerable advance over what we have seen in the past in terms of what the govern-

ments are willing to say on the record. This reflects the attitude of what they are willing to do.

And even more encouraging so far as I am concerned, are the actions which are being taken, which are not so much on center stage, and which may not be publicly announced as matters of policy but nevertheless are taking effect. I think they are going to have a considerable impact upon the behavior of Libya before we are through.

I would just like to answer any questions you might have, Mr. Chairman.

The CHAIRMAN. Thank you very much, Ambassador Oakley.

Let me make certain I understand the figures that you gave with regard to the number of Italian nationals who are now working in Libya. Certainly the figure often used in the press and maybe the best current official total before the one you gave us today was 17,000. And very frequently that has been used as a discussion point underlining Italian economic interest in Libya as well as exposure of that number of persons.

Now you are testifying today that the Italians at the summit mentioned that the 17,000 figure has been reduced to 3,000. Is that correct?

Ambassador OAKLEY. That is what Prime Minister Craxi said publicly, sir.

The CHAIRMAN. That is a very substantial change. And did not Prime Minister Craxi also indicate that this was deliberate on the part of the Italians, that they are disengaging or at least diminishing their economic presence in Libya?

Ambassador OAKLEY. Well, it is coming for a variety of reasons, Mr. Chairman, and, quite frankly, we would not have had much faith in the efficacy of our attempts to apply economic sanctions to Libya had it not been for the peculiar situation of the world oil market. As you know, because you witnessed our attempts to impose economic sanctions on other countries at other times, it usually is not terribly successful. In this case we were confident that economic sanctions could succeed because of the peculiar situation here.

The Europeans, for their own reasons, as a matter of principle are unwilling to entertain this possibility formally. But both because Libya's economy is in bad times because of the world oil market and the fundamental mismanagement by its leadership, and because of the problems posed by the international terrorist threat to Italy as well as to the United States coming out of Libya, the Italians have cut back and will continue to cut back, I believe, on their economic relationship with Libya.

It is for a variety of reasons, and the private companies have made decisions, just as the Government has made decisions. You cannot attribute it just to one thing or the other. But the collection of factors is having the effect that we think is absolutely essential. I believe that other governments for a variety of reasons and other companies for a variety of reasons will probably follow the same path.

Some are leaving because they are scared. In January, when Deputy Secretary Whitehead and I visited the European capitals, we made the point when they told us they had a lot of people work-

ing there. We said well, you better try to get them out. That is what we are trying to do with our citizens because we think the situation there is very dangerous for foreign nationals.

Well, they did not pay too much attention. I think now they recognize how dangerous it is. So that is another contributing factor.

The CHAIRMAN. Was our own announcement that United States oil firms are expected get out of Libya timed to be a part of this consideration at the summit?

Ambassador OAKLEY. The decision was made just before departure for the summit, with a view toward further encouraging our allies to do what needed to be done. As you know, the initial decision had been to give the oil companies an interim period in which to try to find a regular way of wrapping up their business. The decision was made shortly before leaving for the summit that their licenses should not be renewed, both because we think it is nationally a moral question and it is important to take all the measures we can to apply pressure against Libya. It is a country with which some journalists have said we are in a de facto state of war—they certainly see it that way from their point of view—but also, indeed it is important as an example to others to get them to do more.

There will be further measures which we are undertaking which I think will be put into effect before too long which will have a direct impact upon what other countries can do. There is consideration being given, for example, to banning the import into the United States, insofar as one can identify it, of refined products which contain Libyan oil. It is not easy to do this, but it is something that is being considered and I think will probably be done before long.

So there are some other things we are doing which will have a more direct impact upon what others can do in terms of business with Libya, as well as this example which we have set.

The CHAIRMAN. Do our friends at the summit have some idea that we are contemplating the banning of products from Libya that have oil content in them?

Ambassador OAKLEY. They do. This was part of the private discussion. There were a lot of things that went on behind the scenes, and they talked about some of the things that they were doing, which, as I said, the effect has been in the case of Italy to really cut back substantially. A lot of governments are doing a lot of different things and they do not want it talked about publicly. We say all right, we will not embarrass you and talk about it publicly. But the important thing is that the actions are being taken.

The CHAIRMAN. But the summit agreed that economic sanctions against Libya would be effective in this instance, although as a matter of principle they did not wish to say in a formal sense that they were going to adopt this course?

Ambassador OAKLEY. Mr. Chairman, I do not think they would use that terminology because they continue to say that as a matter of principle economic sanctions are unacceptable when applied to any country. But in a different way I believe that they do understand and are taking steps to limit their economic relationships, even though they would not call it economic sanctions.

The CHAIRMAN. Ambassador Oakley, you also mentioned that in the case of Italy, the Prime Minister indicated that under certain

hypothetical circumstances, for example an attack on Italian persons or interests by identifiable Libyan forces it is conceivable they might, using their national means, as you characterize it, employ force or military means against Libya unilaterally themselves. At least hypothetically the Prime Minister entertained that idea.

Ambassador OAKLEY. He did.

The CHAIRMAN. Without endorsing necessarily our unilateral use of military force in an attack upon Libya?

Ambassador OAKLEY. Indeed, and that is precisely the point. In the statement there is a certain amount of flexibility. We would naturally have preferred they come right out and say well, yes; we would support the idea of military force, we support the idea of economic sanctions. But as it is we think it is an excellent statement.

The CHAIRMAN. So bit by bit our allies, at least those who were at the summit, are entertaining some of the same reasoning that we have gone through with regard to economic sanctions and with regard to the use of military force as an ultimate situation. They have gone through that thought process but they are for the moment unwilling to commit to concerted economic sanction business or a general policy with regard to concerted use of military force.

Ambassador OAKLEY. That is correct.

The CHAIRMAN. Senator Pell, do you have questions?

Senator PELL. Thank you very much, Mr. Chairman.

I congratulate the Ambassador on his ability to respond cooly to questions with no sleep at all and I admire him very much for the able presentation he made.

One question that has bothered me is the fact that terrorism has always been with us since the dawn of history. This is perhaps the first time that we have been the principal targets of that terrorism, but I believe you have the figures, and I would be grateful if you would submit them for the record, of going back as far as you could, say 50 years, if those figures are available, on a worldwide basis how many people were killed by terrorist activities over the years up till now.

I have a feeling that the total number may not have changed. And I would like very much to see those figures, if by chance they are available.

Ambassador OAKLEY. We can go back with pretty good figures at least 15 years, Senator Pell. We do have the figures there. And there was a high incidence of terrorism in the 1970's, which diminished toward the end of the 1970's and is coming back up again. The average for 1973 through 1973 was about 500 incidents. Then it jumped up to 600 for 1984 and 800 for 1985. The number of people killed and wounded also jumped way, way up. There were something like, I guess, in 1984 there were 1,279 casualties. In 1985 there were 2,177, including almost 1,000 people killed in 1985.

So there has been a considerable increase not only in the number of incidents but in the lethality of the incidents here in the last 2 years, in part because of the increased state support and deliberate use of terrorism as an instrument of government policy, something that was denounced in this statement on international terrorism.

And, as you say, terrorism has been with us. It will continue to be with us. But this idea of state support, turning it into an instru-

ment of government policy, is something which is new and is something which we think has to be stopped.

Senator PELL. I think in 1985, if my recollection is correct, we had 24 Americans killed through terrorist activities. There were others who were killed around the world. The previous year I think there were 12 or 14. The year before that there were around 250 because of the bombing of the Marines in Lebanon.

Ambassador OAKLEY. That is correct.

Senator PELL. But I think it would be of interest for the committee, or at least for me, to see these figures in total perspective, and there is also the question of what is brought in. You have, I imagine, a great many cases of PLO and things that we may not even be aware of or an argument could be made that the Contras' activity outside Nicaragua is state-supported terrorism by us.

So you have some difficulties here, but it would be interesting to see the total record. Thank you very much.

[The information referred to follows:]

CASUALTIES CAUSED BY INTERNATIONAL TERRORISM, 1968–85—U.S. DEPARTMENT OF STATE, OFFICE OF THE AMBASSADOR AT LARGE FOR COUNTERTERRORISM

Year	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
International:																		
Total dead	34	56	127	36	151	121	311	266	409	230	435	697	507	168	128	637	312	886
Total wounded	207	190	209	225	390	199	879	516	806	404	629	542	1,062	804	755	1,267	967	1,300
Total casualties	241	246	336	261	541	320	1,190	782	1,215	634	1,064	1,239	1,569	972	883	1,904	1,279	2,186
United States:																		
Total dead	5	3	6	4	23	23	42	18	7	4	9	15	9	7	8	271	11	[1] 39
Total wounded	10	3	14	23	33	2	17	78	32	7	21	21	17	40	11	115	31	160
Total U.S. casualties	15	6	20	27	56	25	59	96	39	11	30	36	26	47	19	386	42	199

[1] Includes 19 U.S. citizens killed in Air India crash.

The CHAIRMAN. Thank you, Senator Pell.

Senator Zorinsky, do you have questions of the witness?

Senator ZORINSKY. Mr. Ambassador, has it gotten to the point yet where our allies would be willing to cooperate to the extent that they might entertain establishing an international terrorist assault and pursuit team? A team which would have both covert and overt access to go into all countries which would be signatories to this international terrorist agreement to pursue terrorism?

It seems that we always call on our allies to join with us in taking a specification, but there is no permanent, organization in-place. I guess it would be similar to Interpol, which of course knows no boundaries and that gives it a greater degree of mobility and flexibility in pursuing criminals.

Likewise, with terrorism we know where a lot of terrorists are, but do not have access for pursuit or surveillance. Are we that close to our allies that we would be in a position to suggest a permanent international group whose sole and prime objective would be to isolate terrorists and pursue them?

Ambassador OAKLEY. I would say that we are probably a long ways away from being able to create some sort of a multinational force of that sort. There is so much difficulty in agreeing upon actions at a particular time. Take the U.N. Peacekeeping Force, for example. Take the recent case of our efforts to apply military pressure to Libya as a form of self-defense and the difficulties we had there.

Particularly when it comes to third countries I think there is going to be a continued resistance to something of this sort. On the other hand, the bilateral cooperation we are receiving from our allies in terms of detecting terrorists, in terms of exchanging intelligence on terrorists, in terms of preventing terrorist activities, it is considerable.

In the last 18 months there have been probably 170 or 180 terrorist incidents abroad which have been prevented by a combination of good intelligence, good security, and good cooperation with other governments. This is on their territory where we are working with friendly governments.

Recently, as you have seen, the Turkish Government and the French Government, working with our own intelligence and security services, were able to detect in advance, surveil and apprehend terrorists directed by Libya who were planning to carry out very bloody attacks against the post exchange in Ismir and the officers' club at Ankara in Turkey, where there would have been hundreds of casualties, and against the visa lines at our Embassy in Paris, where there probably would have been scores of casualties.

It was thanks to good work with those two governments and the sort of cooperation we have on a bilateral basis. It is never talked about, fortunately, because if the particular operations, were made public, we would not be able to succeed. But there have been, as I say, 170-odd of those just in the past 18 months.

But there is a big difference between having that sort of cooperation between two countries and having a multinational force, particularly one that would operate in their countries. This is the biggest difficulty; those countries whose governments are either unwilling or unable to provide the sort of assistance and cooperation

that we are getting from some of the other countries with whom we work most closely.

We have an assistance program which has been quite good in encouraging other governments to work more closely with us in improving their capabilities. It is run by the State Department, which supplements other programs that are run by other agencies. This has helped a lot, I think, as well as this increased recognition that it is a threat to them as well as to us. But we are not yet in a position where we are going to have this sort of multinational force that would be ideal.

Senator ZORINSKY. Of course you know that the overriding fear in the heart of a criminal in this country, more so than local police, is the ability of the FBI to pursue criminals across state lines.

Ambassador OAKLEY. That is right.

Senator ZORINSKY. Looking at it from the terrorist's point of view, certainly a law enforcement entity is far more to be feared if it does not have to stop at a boundary.

Ambassador OAKLEY. Well, this is where extradition is very important. And let me cite one example of where you get the peculiar combination of narcotics trafficking, terrorism and extradition. Last fall the Palace of Justice in Bogota, Colombia, was attacked by a group of terrorists from the M-19 group, as they call themselves. The records were burned. Six justices of the supreme court were killed.

We suspected that this probably had a narcotics connection because terrorism in Colombia increased tremendously starting 2 years ago when the Government of Colombia began to work with the United States in apprehending narcotics traffickers, particularly cocaine. It increased still more a year ago when for the first time the Colombian Government had the political will to extradite some of these people to the United States, because—this is your point—once they get here they know they are going to be in for a long, long stay in jail. If they are down there, they figure they can make a deal.

There were reliable reports that the people who carried out that attack against the Palace of Justice were paid $5 million by one of the chief narcotics groups down there for the precise purpose of destroying the legal records and intimidating the judges so there would not be any more extradition.

So the idea indeed of getting them back here where we can take them, where they have committed crimes against Americans, a point that Senator Specter has been making, is a very, very important one. There are means of doing that now. We hope that we can improve upon them.

Senator ZORINSKY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Zorinsky.

One short question, Ambassador Oakley. There has been discussion of the fact that 13 percent of the Fiat Co. is owned by the Government of Libya, but there are also public reports that Mr. Agnelli, the chairman of Fiat, is attempting to buy that back. Was there any discussion of that connection at the summit and do you have any comment about the problems involved in those situations

where Libya holds assets in allied firms that contribute to Western defense efforts?

Ambassador OAKLEY. Well, it is a problem to us. There are other problems. The Libyans and some other Arab governments have a bank and there are Libyan investments around the world. I do not know that that particular problem was discussed at the summit, but I think you are correct in saying that Fiat and the Italian Government both would prefer to have those shares back again.

It gets complicated because, you know, of free enterprise and things of this sort, and how do you do it. I do not know whether the Italians will be able to put through a special law if the Libyans are unwilling to sell, which is presently the case, that would allow them to seize it or pay compensation for it. But if things continue the way they are going, they may get to that point.

But right now they are indeed trying to get those shares back from the Libyans. They recognize they have put themselves in a vulnerable position because this was done at a time when Libya, so far as they could see, was not a threat. Now they recognize it is a threat.

The CHAIRMAN. Thank you very much for coming this morning. We appreciate your testimony.

The Chair would like to call now to the table Mr. Parker Borg, Deputy, Office of the Ambassador at Large for Counterterrorism, Department of State, and the Honorable Stephen Trott, Assistant Attorney General, Criminal Division, Department of Justice.

Mr. Borg, would you proceed first with your testimony?

STATEMENT OF HON. PARKER W. BORG, DEPUTY, OFFICE OF THE AMBASSADOR AT LARGE FOR COUNTERTERRORISM, DEPARTMENT OF STATE, ACCOMPANIED BY WILLIAM BACCHUS, OFFICE OF PERSONNEL, DEPARTMENT OF STATE; COMMANDER TOM ROBINSON, U.S. COAST GUARD HEADQUARTERS, PORT AND ENVIRONMENTAL SAFETY DIVISION

Ambassador BORG. Mr. Chairman, committee members, it is a pleasure to be testifying here today on behalf of the State Department regarding the various antiterrorism bills before you. Today's hearing is also timely because combatting terrorism has become a focus of our foreign policy and is a concern of Americans at home and abroad.

The number of terrorism-related incidents in recent weeks underscores the need for Congress to enact as quickly as possible legislation that would give the State Department authority to enhance embassy security. The administration's bill, S. 2015, deals primarily with physical security aspects of our antiterrorism effort. I wish to underscore the importance of this bill to all of us who deal with other facets of the counterterrorism effort.

H.R. 4151, which recently passed the House, addresses the problem of embassy security and also includes titles that go beyond the scope of physical security. I will limit my remarks to these titles, plus the bills introduced by Senators Denton and Specter.

The omnibus House bill covers many areas which no single office normally deals with in much detail, so I have brought with me officials from other offices who can handle nuclear, narcotics, person-

nel and maritime issues. In response to questions that you may have that go into any detail I would like to defer to some of the experts so we can provide you maximum support and assistance.

Let me start with title V of H.R. 4151, the House bill. We do not favor the proposed most-wanted list of terrorists included in section 501. Specialists seriously question whether an official most-wanted list would be an effective tool in deterring international terrorism. We prefer that the section be dropped. We understand that the Justice Department, the FBI, and the CIA also have reservations about this provision.

The administration endorses section 503, the proposed rewards program, with proposed changes worked out by the State Department, the Drug Enforcement Agency, and discussed with the committee staff. We view the rewards program as a potentially useful tool in countering narcoterrorism.

We strongly endorse section 508, which is designed to deal with persons providing terrorism-related expertise to other countries. There are minor modifications which I think will be covered in greater detail in Mr. Trott's presentation.

We also believe that section 509 on economic sanctions is not necessary because authority already exists. When countries are determined to be supporters of terrorism, the administration has shown no hesitation in invoking the provisions of the Export Administration Act.

Title VI deals with international nuclear terrorism. The United States has taken a leading role both in facilitating international cooperation and in establishing domestic procedures. This is certainly a critical area. We believe, however, that existing legal provisions are sufficient for us to continue in our efforts. We are concerned in particular that the provisions of title VI, even though they largely duplicate existing law, could be seen by our allies as a shift from our current cooperative efforts to a more unilateral approach. We urge the committee to delete this title from the bill.

Title VII contains five directives to the President. We sympathize with the intent of most of the directives and have been pursuing these ideas for many years. We do not believe, however, that it is necessary to direct the President to take action in these areas.

Section 704 gives us special problems. While we sympathize with the concern which generated this proposal and are still reviewing it, we are concerned that the elimination of place of birth on passports of others countries will seriously restrict our ability to track the movements of terrorists and other undesirables. Most of the other sections are unnecessary and limit our flexibility in dealing with a rapidly evolving situation. We would prefer that the entire title VII be deleted.

Title VIII, providing for compensation of victims of terrorism, is, as Mr. Spiers testified last week, a provision the administration strongly supports.

Title IX, the administration does not believe that additional authorization is needed for the Coast Guard. These objectives cost money. What is needed is not additional authorization but the funding to carry out the authorizations, the existing authorizations.

Turning now to the proposals of Senators Denton and Specter, I would like to note the appreciation particularly from the State De-

partment for the strong support which both of these Senators have provided in the antiterrorism effort.

Regarding S. 1941, introduced by Senator Denton, I would like to start by saying the administration shares the objectives of this bill to improve the ability of the United States to fight international terrorism. The State Department, however, has problems with the bill as drafted. By way of illustration, I would make some general observations.

Section 2, the statement of findings, in effect raises the old problem of trying to devise a suitable definition of terrorism. The Vice President's task force spent considerable time looking at this problem and decided that this was not a useful way to pursue the question.

We agree with the general concept of using economic sanctions as a potential lever against countries which support terrorism. Existing legislation, however, already gives the administration extensive authority and needed flexibility to limit U.S. actions and commercial relations with countries supporting terrorists. We have used this authority vigorously whenever possible. Libya presents a good example.

The International Security and Development Cooperation Act of 1985, which this committee dealt with last year and which was signed into law in August, authorizes the President to ban imports from countries supporting terrorism. Earlier legislation continues to provide similar authority for other types of sanctions covered in S. 1941.

The new bill, as written, would reduce the flexibility which the administration has under existing authority. There are situations in which it may be more effective to apply sanctions in steps rather than using up all of the options at once. Likewise, once a country is on the list and showing signs of changing its support for terrorism, we seek the flexibility to deal with them without dealing in an all-or-nothing situation.

Rather than taking up more time with details, I would like to reiterate our support for the objectives and suggest that our staffs might get together to discuss this question.

The other measure on which we were asked for comment is Senator Specter's Senate Resolution 190, which expresses the sense of the Senate that the President should call for international negotiations for the purpose of seeking a definition of an international crime and consider making such a crime a universal crime under international law.

We share and strongly support the goal of enhanced international cooperation to fight terrorism as crime. We note, however, that there are already a number of existing legal instruments dealing with terrorism, such as the 1970 Hague Convention, the 1971 Montreal Convention, the 1973 U.N. Convention Against Attacks on Diplomats, and the 1979 U.N. Convention Against Hostage-Taking.

We believe that an approach aimed at specific forms of terrorist crime is a more productive way to proceed than trying to obtain international consensus on a general definition of international terrorism as a crime. The experience at the United Nations, where it took months of hard work to obtain passage of a U.N. General Assembly resolution against terrorism last year, is an example of the

difficulties in obtaining agreement on even nonbinding general measures.

We strongly support, however, Senator Specter's S. 1429, which in part is aimed at filling a gap in our current structure of criminal jurisdiction over acts of terrorism committed against Americans abroad.

Finally, I would like to reiterate what Ambassador Oakley just stated regarding the United States-United Kingdom extradition treaty. In our position, we see numerous situations where the international effort to combat terrorism has been hampered because a nation refuses to extradite or take other actions against terrorism because they claim to have political motivations for their crimes.

In conclusion, Mr. Chairman, I would like to emphasize a point which has been made before but is worth making again in the context of this hearing. The fight against the scourge of international terrorism is going to be a long and difficult one. Terrorism is not a problem which easily lends itself to legislative solutions. The situations are too fluid and varied. However, there are a number of tools which we attempt to use, including economic, political, military, legislative. We welcome the opportunity to work with you and try to refine and develop legislative actions which will be useful in the fight against terrorism.

Thank you very much.

The CHAIRMAN. Thank you very much, Ambassador Borg.

STATEMENT OF HON. STEPHEN S. TROTT, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. TROTT. Thank you, Mr. Chairman and members of the committee. It is a distinct pleasure for the Department of Justice, on behalf of Attorney General Meese, to appear before you today to encourage the enactment of additional legislative measures that in our view will be beneficial in this country's efforts to thwart terrorism, a problem that by virtue of its odious and wanton criminal acts has captured the acute attention of all Americans.

In our view, such measures must include unilateral, bilateral, and multilateral measures. Let me just speak for a few moments, then, about unilateral measures.

While the United States has already enacted numerous measures which are of benefit in our struggle against terrorism, there still exists some gap both in our criminal sanctions and our preventive measures. The Senate, to its credit, has already passed two important measures that should be part of any omnibus effort to fight terrorism. They are, of course, S. 1429 and S. 274.

S. 1429 will close one of the major gaps that now exists in current Federal law dealing with overseas terrorism. S. 1429, which was introduced by your second witness and colleague, Senator Specter, and which was passed by the Senate by a vote of 92 to nothing earlier in February of this year, would make it a Federal crime for a terrorist to murder or assault U.S. citizens overseas.

While existing Federal law now covers the overseas murder and assault of certain protected Federal officials, current Federal law does not directly prohibit such acts against private U.S. citizens or personnel of our military services who are not attached to a U.S.

Embassy. While other Federal statutes, such as hostage-taking, aircraft piracy, aircraft sabotage, and murder on the high seas do protect all Americans overseas, their limited jurisdictional bases or their particular elements do not always cover all forms of terrorist violence inflicted upon our citizens overseas. S. 1429 fills a serious gap in our laws with a workable mechanism and we encourage its passage soon.

S. 274, the Nuclear Power Plant Security and Antiterrorism Act of 1985, is a preventive measure that has likewise passed the Senate with strong bipartisan support. S. 274 would give the operators of nuclear reactors the opportunity and the responsibility to check for possible criminal history records on their employees having unescorted access in our nuclear facilities. S. 274 would require fingerprinting of such employees and the submission of their fingerprints to the FBI for a criminal history records check. With the tragic misfortune recently in the Soviet Union, we are all reminded of the need for careful security in our nuclear plants.

The reinstitution of capital punishment in the Federal system for crimes relating to murder, espionage and treason is also a priority of this administration. The full Senate now has S. 239, which was reported favorably by the Judiciary Committee, pending before it. While the full Senate will likely consider floor amendments to S. 239, one of which we anticipate will be an amendment to add the death penalty to 18 U.S.C. section 1203 if the death of any person results from a foreign hostage-taking situation, we are confident that the Senate will once again produce a bill that contains the necessary procedures that will permit the constitutional imposition of the death sentence. Unfortunately, similar prior bills which the Senate passed have languished in the House. Accordingly, we vigorously support prompt enactment of this important antiterrorist legislation.

On March 18, 1986, the House passed H.R. 4151, the Omnibus Diplomatic Security and Antiterrorism Act of 1986. H.R. 4151 has many sanctions that the administration believes will be beneficial in the continuing fight against terrorism. It also contains some measures, such as section 501, the most-wanted international terrorist list, and section 704, removal of place of birth information from passports, that in our judgment may be counterproductive and consideration should be given to deleting them from the bill.

The Department of Justice is very supportive of section 503, dealing with rewards for information relating to international narcoterrorism and drug trafficking, section 505, the counterterrorism protection fund, and section 508, authority to control certain terrorism-related services.

One of these measures which the Department of Justice believes could prove especially beneficial is section 508. Section 508 creates a mechanism to control the provision of certain services by Americans to the military, police and intelligence agencies of those countries that have been designated under section (6)(j) of the Export Administration Act of 1979 as engaging in or providing repeated support to international terrorism. The countries that I understand are currently so designated are Libya, Iran, South Yemen, Syria and Cuba. Section 508 is the essence of the services bill submitted

to the 98th Congress by the President to close the gaps in Federal law that came to light in the so-called Wilson-Terpil investigations.

I have set forth in my prepared remarks, which you have received, Mr. Chairman, suggested changes to section 508 which the Department believes would enhance its effectiveness. Rather than enumerate them now, I would simply indicate that we are willing to sit down with your staff and go over those changes so, as Ambassador Borg indicated, we can be of as much support to you as possible.

Another measure which may give the United States additional tools to confront terrorism is S. 1941, the International Terrorism Deterrence Act. The Department of Justice does believe that trade sanctions play a very important role in the effort to confront terrorism and that there is a need to bring some order and coherence to the various and inconsistent provisions of current law. We loudly applaud Senator Denton's work in this area. While supportive of the need for further study in this area, we essentially defer to other agencies on the technical adequacy of this bill.

Let me touch for a second on bilateral measures. We believe firmly that the United States must do everything on its own to improve its capability to fight terrorism, a successful effort that will require the assistance of many countries, especially our close allies. Besides improving with our allies our intelligence gathering and sharing mechanisms, our law enforcement investigative and prosecutive efforts, and coordinated trade sanctions, we should enter into bilateral agreements, as we have.

One area for such agreement is the area of the political offense exception to extradition, a problem that continues to stick in our craw and impeaches our continuing statements of support for counterterrorism measures. Recent decisions of U.S. courts have blocked some of our desires to remove terrorists from this country and send them to places where they can stand trial.

We believe that this bilateral approach with our sister democracies to outlaw the use of violence where the ballot box allows orderly democratic change is an essential aspect of our antiterrorism effort. The first country with which we have concluded such a provision is the United Kingdom. This committee has been considering the ratification of the supplementary extradition treaty with the United Kingdom. We appreciate the need to study this issue and we especially applaud your leadership, Mr. Chairman, and we hope that soon this committee and the full Senate will give approval and its advice and consent to this important tool for fighting terrorism.

Agreements with our allies, while important, are not the total answer. We fuily agree with the thrust of Senator Specter's resolution, senate resolution 190, calling for renewed international effort to create a crime of terrorism over which there will be universal jurisdiction akin to that which the civilized world has created for piracy. We commend him for his continuing leadership against this menace.

In approaching this effort, however, we should fully realize that international law evolves very slowly and I do not believe that we can expect in the immediate future that a world as diverse as ours will formulate a complete agreement on the entire scope of terrorism, much less an accepted definition of that activity. We therefore

question whether efforts to agree on a definition of terrorism or to establish a world criminal court to try international terrorists would be productive at this time. But there may be areas of terrorism for which universal condemnation by all civilized countries is possible, and it is our hope that some movement will occur in that direction.

At the risk of preaching to the choir, let me offer just a couple more observations. Crime up until about the 1950's was really a local, a State, or a national problem, and as such could be confronted effectively with local, State, and national solutions. But with the advent of jet travel, international banking systems, the internationalization of industries and businesses, and all the rest, just as the economy has become a global economy, crime has become a global problem.

And in order to confront crime in that dimension, we must go forward with international or global solutions with those dimensions to these problems. That is why the bilateral and multilateral measures that we have been talking about today are so important with respect to confronting terrorism. I have been in law enforcement for 20 years. I have been a first person witness to many of the law enforcement measures that we have used against lawlessness and crime. I have watched with absolute awe, amazement and admiration as the Federal Bureau of Investigation, working with the Department of Justice and the courts, using legislation provided by the Congress, has succeeded in thwarting one attempt after the next of essentially what would amount to acts of international terrorism in the United States.

The rule of law, when used by competent authorities with appropriate resources and the appropriate tools, can and does have an impact against terrorism. Our goal is to take what we know works, what has been used successfully here in the United States, and extend that learning in a network of cooperative agreements with our allies around the world to provide the same impact internationally as we have had nationally on this problem.

With that, Mr. Chairman, I would be pleased to answer any of your questions on this subject.

The CHAIRMAN. Thank you very much, Mr. Trott.

Let me ask both of you to begin with if we may have your cooperation in responding in writing to questions about the details of each of the titles. In this hearing I will not attempt to raise all of those questions in our public dialog, but in the same spirit in which you have already been working with the staff we would hope that we could have your testimony on each of the specifics of the titles as we go through them ad seriatim.

Let me raise some questions with regard to title VIII, the victims of terrorism compensation. That title was endorsed, section 802, by Ambassador Borg, and it provides compensation for foreign national employees of the U.S. Government overseas. What is the current practice and in light of the fact that the legislation we are considering involves $4 billion, more or less, for security enhancement, what will be encompassed by the victims compensation coverage in terms of the numbers of persons or even the types of persons to be covered in this section?

Ambassador BORG. Certainly. First let me say we would appreciate responding in detail to all of the provisions. As Mr. Spiers testified last week, this is under his jurisdiction, and so I have with me Mr. William Bacchus from the Office of Personnel, who is acquainted with the details of this, and I would like to call on him.

The CHAIRMAN. If you could come to the table and assist us at this point.

Mr. BACCHUS. Thank you, Mr. Chairman.

As drafted, title VIII would provide coverage for certain foreign national employees of the U.S. Government, and for certain contractors, if they were in a personal service relationship to the Government. This would not mean, for example, that so-called third party contractors would necessarily be covered.

If there were a contractor to a U.S. construction firm which in turn was a contractor building an embassy, they would not necessarily be covered. The President could make a determination that the hostage situation or the terrorist situation was such that coverage was warranted, but they would not automatically be covered. So we do not think it would expand the liability of the Government beyond what our liability might be under contracts in the Workman's Compensation Act.

The CHAIRMAN. Just as a matter of record, have you consulted with the Department of Labor on this section?

Mr. BACCHUS. Yes, sir, we have. There was a major issue earlier on when the administration was clearing its version of the bill about how we should handle compensation and its relation to the FICA system. I think we have arrived at a procedure whereby the Department of Labor would regulate these provisions in conjunction with the Secretary of State that is agreeable to all. And that is the version that is contained in title VIII as passed by the House.

The CHAIRMAN. Would benefits under this title be taxable?

Mr. BACCHUS. Yes, sir, they would be.

The CHAIRMAN. Who will determine eligibility under the program?

Mr. BACCHUS. The title, as drafted, provides, obviously, a set of definitions as to what is intended as a hostage situation or terrorist situation. The criteria for who is covered, the President, we believe, would establish by Executive order exactly how those would be applied, and this would, depending on the title, devolve to either the Secretary of State or, as I have mentioned earlier, to the Secretary of Labor for some of the compensation, workman's compensation type provisions.

The CHAIRMAN. Have you given thought to whether the training and education benefits under this title would be available after a relative is taken hostage or would it only be for training and education in process at the time of the hostage-taking, and would there be a cap upon benefits to an individual family?

Mr. BACCHUS. Yes, sir. It could be continuing training or it could be new training. The intention there would be to provide for the possibility that in an extended hostage situation a family member might have to prepare him or herself for a new way of earning their living. The bill contains a cap for family members, saying that you can in effect either complete the semester or the quarter that is under progress when the hostage situation terminates, or, if

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the educational process is not set up in quarters or semesters, there is a 16 week after the termination of the hostage situation cutoff point.

For former hostages, the bill is similar to veterans educational provisions, and this is what it was drawn from. The total period during which education could be obtained, retraining, for example, for a hostage who is no longer able to serve overseas and needs a new occupation, has to be done within a 10-year period, and the maximum amount of months that education can be covered would be 45 months, in effect the equivalent to a college degree.

The CHAIRMAN. Thank you.

Let me ask any of the witnesses for the administration position on title IX, the maritime security title.

Ambassador BORG. Regarding title IX, I have a representative from the Coast Guard who can perhaps address this.

The CHAIRMAN. Very well. Would you please come forward? Would you please identify yourself?

Commander ROBINSON. Thank you, Mr. Chairman. I am Comdr. Thomas Robinson of the U.S. Coast Guard, stationed at Coast Guard Headquarters in the Port and Environmental Safety Division, which has responsibility for our port security functions.

The CHAIRMAN. Would you please give the administration's position on title IX, the maritime security title?

Commander ROBINSON. The administration supports the intent of this title and in particular the Coast Guard supports the need for section 906, which would amend the Port and Waterways Safety Act to provide specific authority for the Coast Guard to carry out a port security program directed towards preventing terrorist acts against passengers and crews on board ships.

Current authority for our port security program stems from the Magnuson Act of 1950, which focuses on response to sabotage and does not provide the civil penalties needed to enforce a viable preventative program. The proposed changes to the Port and Waterways Safety Act found in section 906 will correct these shortcomings, and we would be happy to work with your staff on the specific language in this title if requested.

The CHAIRMAN. Thank you very much, Commander.

Is there an administration position on title X, the Fascell fellowships?

Ambassador BORG. The administration position, I understand, is that we think this is a very interesting idea. We do not know if it can be developed so that it can become a feasible program, but it is a very interesting idea and one certainly worth exploring.

The CHAIRMAN. Thank you very much.

Senator Pell, do you have questions for the witnesses?

Senator PELL. Not at this time.

The CHAIRMAN. Thank you, Senator Pell.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I have a statement which I would like entered in the record as if read, and I want to commend you and also Senator Denton and Senator Specter for the legislation which they have introduced and commented on this morning and which I support.

The CHAIRMAN. With unanimous consent, the statement will be entered.

OPENING STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Mr. Chairman I am a strong supporter of firm action against international terrorism. Terrorism poses a fundamental danger to our way of life, a danger we cannot afford to ignore. It is a threat to peace; it is a threat to the rule of law; it is a threat to civilized values and the very concept of responsible behavior.

We sometimes hear it said that the only way to deal with terrorism is to eliminate its root causes. Only by eliminating Palestinian grievances, it is said, can we deal with Mideast terrorism; only by addressing inequality in Northern Ireland can we end the terrorism of the IRA; only by understanding Libya's grievances against the West and Israel can we prevent Qadhafi's terrorism.

This is only partly true. Terrorism is not a cause; it is a tactic. Those with grievances can either pursue them in accepted ways, or they can turn to terrorism as a means of gaining their ends. We need to define clearly what constitutes a terrorist action and condemn that action regardless of who commits it or why. We cannot excuse terrorist means just because we may sympathize with some of their ends.

I also hear it said sometimes that terrorism can't be stopped—that it's too difficult or expensive, that the world is helpless against a Carlos or a Qadhafi.

That is nonsense. There was a time when it seemed as if there was no solution to the problem of airlines being hijacked to Cuba. But that problem was brought under control. There was a time when European countries were worrying that the Red Brigades or Red Army faction were going to disrupt their societies entirely. Today, many of those young radicals are behind bars, and those countries are regaining their nerve. The problem has shifted to a new aspect, that of state-supported terrorism.

The point is, Mr. Chairman, that society is not helpless. Terrorism is a crime, and societies have learned to cope with criminal behavior.

I am pleased to have cosponsored with the distinguished Senator from Alabama, S. 1941, an attempt to come to grips with some of these problems. I look forward to discussing with our witnesses how we can work together with the administration on this.

I just have one further question, Mr. Chairman, and it is not directly relevant to the discussion that is taking place here. But since we have a representative from the State Department with us, I am curious to know if we pursue alternatives to combat terrorism. Goodness knows, we have tried everything including getting our allies to join us in some kind of an effort to stipulate that trade and commerce would basically cease with those countries supporting terrorism. I am always reminded of the effort of President Kennedy in Cuba where there was actually initiated a blockade, which is short of an act of war but nevertheless was relatively effective for the particular purpose of stopping the Soviet Union from establishing certain missile capabilities at that time.

I am wondering if the State Department has reconsidered this type of activity, in the sense of notifying our allies in a particular instance—not necessarily Libya, but Libya could be a case in point—where we have failed to obtain enough support for economic sanctions that we would go one step further.

It would seem to me, Mr. Chairman, that on reflection on what actually took place in Libya, where we did initiate an attack, that indeed that could be considered a significant act of war. In light of that, the application of the principle of blockade does not seem as severe as it did before we had initiated that attack.

Ambassador BORG. There is a wide range of political, economic, diplomatic, and military measures which can be considered in the fight against terrorism. In each terrorist incident, and in dealing with each state which supports terrorism, we have to look at what is the most appropriate way to deal with the specific problems.

With regard to the case of Libya, we have over the course of the past 5 or 6 years run through a variety of political, economic, and diplomatic initiatives. In looking at the most recent problem and determining what would be the best response, among the things that we did look at was the prospect of an action in the Mediterranean that might restrict the flow of commerce in and out of Libya,

but it was determined that there were other more effective ways to deal with the problem at this time.

We would not, I do not think, restrict——

Senator MURKOWSKI. One could conclude that the Libyan attack was the other alternative that appeared to be more——

Ambassador BORG. It was determined that was the best way to send a signal to the Libyans in this particular case.

Senator MURKOWSKI. It is fair to say that the other alternative was not necessarily eliminated. It was considered but it was dismissed.

My last question, Mr. Chairman, is with regard to the administration's position on the diplomatic security bill. As a member of not only the Foreign Relations Committee but as one of only two members of the Foreign Relations Committee who serve on the Intelligence Committee, I am interested in knowing how you justify the need for more security officers for the State Department in our embassies when we know that oftentimes good intelligence is the best protection you can expect to get.

So my question is, how do you justify such substantial increases in general security personnel instead of putting those funds into better intelligence and warning sources to protect our posts?

Ambassador BORG. Within any particular embassy, we would look to protection through both defensive measures, through better security, and through obtaining better intelligence. We are pursuing both lines of approach.

Senator MURKOWSKI. It seems like your priority is moving to a more defensive concept of security. Is that an incorrect assumption?

Ambassador BORG. I think it is better to state that we have not given adequate attention in the past to the security side, and we are trying to bring that more up to par.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Dodd.

Senator DODD. I note in both the statements of Assistant Attorney General Trott, as well as in that of Ambassador Borg—in the case of Trott a bit more definitive; and in the case of Mr. Borg a little less definitive—that both of them make the same point about the extradition treaty that we have before us.

There is no argument over whether or not we ought to be trying to do more about terrorism. It is interesting how some people try to claim the moral high ground on the issue of terrorism, but I think there is in general a unanimity of feeling about that issue. Where some of us disagree, and what concerns me—and I will give you a chance if either of you want to comment on it—is a point you make in your statement, Mr. Trott, regarding the preclusion of "the use of political offense exception in cases involving violent crime." You continue on page 9 of your testimony:

> I see numerous situations in which the international effort to combat terrorism has been hampered because a nation refuses to extradite or take other actions against terrorism because they claim to have political motivations. Allies have been frustrated in bringing terrorists to justice because they have used political claims to obtain refuge.

There is, I sense, a lack of sensitivity of a longstanding principle in this country. Extradition law in this country goes back virtually 200 years. It was changed a bit in the Polk administration, but now we've got 150 years of adherence to the notion that the political offense exception, is not something to be taken lightly.

We have tried to stay away from causes in trying to define who our allies are and who our enemies are from time to time. Trying to look at the question of political offense requires an arm's length approach. I see that long history deteriorating quickly, and it worries me because I think once you get into that quagmire of picking sides on things, I do not know how you begin to determine who is a terrorist.

I am not talking about the conditions placed in some alternative legislation where you specifically declare an act to be a terrorist act because of the techniques used or because the targets, military or not, could endanger civilians. We have identified a number of those which on their face would be terrorist acts, but in many cases require that we adjudicate whether or not it was a political offense.

I do not know why there is such a rush, in our efforts to deal with terrorism, to wipe away that 200 years of history. That is the concern, I think, of many of us on this committee, and again I do not want to solely dwell on that point, but I notice both of you at least make reference to it here. Maybe you would like to comment a bit further on that, over and above what is included in your testimony.

Mr. TROTT. Senator, yes, I would very much like to comment on that, and you are correct in pointing out that the political offense has a long history. We are not insensitive to the political offense at all. We believe that there is a place in our law, in our treaties, and in international law for the political offense. But we frankly believe that it ought to be reserved for crimes of advocacy, crimes of speech and matters like that, or matters in which one country involved in a bilateral relationship might not recognize the activity as a crime and the other would. That would be an area where you would be talking about political offense.

But our effort now is to eliminate violence as a way of getting things done, to repudiate that approach. And I believe that it is high time to erode 150 years of tradition if that tradition means that we will allow our country, or our allies will allow themselves, to become havens for people who have access to ballot boxes but choose instead to throw bombs and to murder people and send explosives through the mail.

This struck home very, very hard to me when I was——

Senator DODD. You put a condition on it, that we have access to ballot boxes. So if we have access to the ballot box, then it is one thing; if you do not have access to a ballot box, then terrorism is OK?

Mr. TROTT. No. I am not saying that at all.

Senator DODD. Well, that is what you just said.

Mr. TROTT. I am talking about and trying to focus in——

Senator DODD. That is my point. You are cluttering it a little bit.

Mr. TROTT. I am getting down to my point. When I was a U.S. Attorney I worked on a terrorist case in Los Angeles where an attempt was made to blow up the Air Canada facilities at the Los

Angeles International Airport. These were attempts that were being masterminded by foreign powers and people offshore. Fortunately, the FBI, using the Foreign Intelligence Surveillance Act [FISA] and its good investigative capacities, found out about this, and at the same time the terrorist placed their fire bombs they grabbed all but one. That was a person who came to the United States and tried to blow up the Air Canada facility——

Senator DODD. Do you think there is any disagreement in that fact situation?

Mr. TROTT. Yes. Not with you, but let me tell you what happened. This was an attempt to get back at Canada for law enforcement activities in Canada. A man by the name of Tchakutian, if my pronunciation still remains with me, managed to escape our dragnet and make his way to France. We got him arrested in France and we asked that he be extradited to the United States. We were told sorry, it was a political offense. You cannot have Mr. Tchakutian.

My point is that we find ourselves now in a situation where people who commit these types of atrocities go from country to country and thumb their noses at us, and I think it is time for us to try to get out of our skins and to realize that with our allies, such as Great Britain, when we both agree that murder is an unacceptable way to pursue anything, we condemn it as a straight common law type of a crime. When the paperwork is there, when the elements are there, then we begin to send these kinds of people back and forth so that the rule of law can cope with the lawless.

Senator DODD. What you are suggesting is then that we have different extradition treaties with different countries based on our definitions of a political offense in different places.

Mr. TROTT. I do not have much of a problem with that at all, because there are certain countries that you and I would agree do not provide the type of due process that we would like to see.

Senator DODD. But you must appreciate from a foreign policy standpoint what a wonderful situation that gets us into, deciding from administration to administration, depending upon the relationship at any given moment in time, to rewrite extradition treaties.

Mr. TROTT. No; I do not agree with that at all. Current extradition treaties right now with most of our friends and allies in other countries are very different in many, many respects.

Senator DODD. Not on that one, not on the political offense.

Mr. TROTT. The political offense exception is now beginning to change. We are in the process of going around negotiating with various countries to try to get the best possible situation for us.

I would agree it would be a great situation if we could have a uniform approach to this, but the real world has not allowed us to do that. We believe firmly that one of the best places to start is with our oldest and most trusted ally, Great Britain. We have respect for her legal traditions, which in many respects are ours, and we believe that in order to support each other and come down against terrorists who jump from country to country and thwart the rule of law and escape justice——

Senator DODD. No one is arguing that. There are plenty of ways to improve that 1972 extradition treaty. In fact, there have been

numerous suggestions on how to improve it. The one difference of opinion is on the question of whether or not you ought to adjudicate cases of violence against those political-military targets that do not fall into the class of acts that would be by themselves terrorist acts. There is a long list of them which I think we all would agree on.

The other ones, where you have clearly a military target with a civil conflict going on—no one is applauding or agreeing with the tactics—ought to be adjudicated by a court to determine whether or not a political offense exception is appropriate. You are not suggesting, though, to eliminate it. I hope you are not suggesting that.

Mr. TROTT. Well, I can tell you that I cannot speak for the administration. I personally would eliminate it for crimes of violence that are mutually agreed on, but I know that that is not a possibility. I believe that if Great Britain has a crime of murder and we have a crime of murder, the motivation ought to be irrelevant for extradition purposes. The motivation ought to be determined by the jury and the judge and the sentencing authority. If we get into questions of motivations, we get tied up in a knot and nothing happens and the terrorists benefit.

Senator DODD. I presume you are familiar with the judicial system in northern Ireland and other places, so the question is not a minor question. This is not a minor disagreement. There are substantial differences in the courts and how they operate.

Mr. TROTT. I have seen what happens with extradition. Ambassador Oakley talked about the situation in Colombia. We were up against a brick wall with drug traffickers who are tightly linked with terrorists in Colombia. The Colombian Government, although we had a treaty of extradition that would allow extradition, would simply not extradite Colombian nationals to the United States for a lot of reasons which both you and I understand.

However, after the Colombian Attorney General, Minister of Justice Lara Bonilla, was killed 2 years ago, President Betancur changed and started to send Colombians to the United States to stand trial. And we sent American citizens to Colombia to stand trial when the appropriate charges are given to us in accordance with the documents.

The shock waves that that has sent through the drug trafficking community in Colombia have been tremendous. It has been unfortunate in that it has resulted in the attack on the Palace of Justice and the assassination of many of their supreme court. The point I am trying to make is that when countries get together and start extraditing criminals that we all condemn, the impact on the criminals is measureable and it has a dramatic effect that stops the activity.

If all terrorists knew that they could not escape simply by having an airplane ticket to a country that has an overdeveloped notion of the political offense, many of them would think twice. I have seen them think twice in the United States. The FBI has stopped certain forms of terrorism cold in this country because the crooks know that the FBI is on them like a cheap suit with electronic surveillance and when they do something they are going to end up in Federal prison.

Senator DODD. We are getting far afield. There is no disagreement on any of that. The question I wanted to raise was strictly that question of defining for purposes of adjudication a political offense. But I gather you are saying that in some treaties with some countries you would just eliminate it entirely as an exception. I see it from the perspective of a longstanding tradition, even with a good ally, even with a good ally. You would start the erosionary process of that principle, and for all the right reasons we might have, given a particular fact situation, we or this administration wants could come down on a certain side of an issue.

I just see that as a very dangerous precedent for this country to enter into in the conduct of our foreign policy and also in dealing with, of course, this problem of terrorism. I do not see it as being quite the panacea that others apparently in the administration see it as. I think you can toughen extradition treaties, and make them a lot clearer. I think you can promote comity wherever possible to establish some uniform standards that we all follow.

But I would hope in the effort to do that we do not retreat from the longstanding principle of the political offense exception, which I think can be better defined. I would hate to see us retreat on that.

Mr. TROTT. You and I would both agree that we hate to see that, with our allies, the political offense exception enable murderers and bombers to escape justice. That is what our objective is.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Dodd.

Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

I found that exchange very interesting and informative for me. I believe the best description of international terrorism is in the Foreign Intelligence Surveillance Act of 1978, where it says:

> International terrorism means activities that (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, where they would be a criminal violation if committed within the jurisdiction of the United States or any state; (2) appear to be intended: (a) to intimidate or coerce a civilian population; (b) to influence the policy of a government by intimidation or coercion; or (c) to affect the conduct of a government by assassination or kidnapping; and (3) occur totally outside the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

Would you agree with that definition?

Mr. TROTT. I think as far as definitions go, that is an excellent one. FISA is one of the best pieces of legislation ever to come out of Congress in terms of combating terrorism and we applaud the FISA law as one of the best tools at our disposal.

Senator PELL. I applaud the administration in its efforts to get at international terrorism. Maybe this is an unfair question, but I believe we have or we did have an extradition treaty with Nicaragua, and it would seem to me that the Contras, under this definition, are engaged in international terrorism, and under that, if they are, would they be liable for extradition?

Ambassador BORG. I am not acquainted with the details of our extradition relations with Nicaragua, but, as I said in my testimony, the Vice President's task force looked very carefully at the

whole question of definitions for terrorism and found that while this legislation had one definition, other agencies and other pieces of legislation used other definitions, and we do not have a single common definition within the U.S. Government.

Senator PELL. Then you would not subscribe to this definition of international terrorism?

Ambassador BORG. I think that applies to particular laws and I would have to look at what the law said and what it pertained to.

Mr. TROTT. Senator, for its purpose, which is to enable the government to invoke the provisions of the FISA law, it is very good. In terms of trying to extract that definition and use it to describe some criminal offense, it starts to have a lot of problems. We do not think in a criminal context that it is necessary to become that sophisticated, because what you have described, each of the activities that you would describe in that definition would include something like a murder, a bombing, mayhem, an assault, an attack with explosives, firearms, which are far more easy to prove and to cope with in a law enforcement sense.

Senator PELL. We are talking here about international terrorism and there must be some definition of it. Ambassador Borg, if you disagree with what I read or think it is not all-inclusive enough, could you submit for the record the definition of what international terrorism is in the viewpoint of this administration?

Ambassador BORG. As I stated, the Vice President's task force looked at this intently, and I will submit for the record the information that they came up with.

Senator PELL. I am not asking for that. We talk all the time about international terrorism. You are our witnesses on this subject. I am asking for you to give us a definition in writing.

Ambassador BORG. We will provide you with the definition that we use at the State Department.

Senator PELL. Thank you very much.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Pell.

Gentlemen, we thank you very much for coming this morning and for being so forthcoming in your responses.

The hearing is adjourned.

[Whereupon, at 12:10 p.m., the committee adjourned, subject to call of the Chair.]

APPENDIX

Prepared Statement of Parker W. Borg

Mr. Chairman, Committee Members,

It is a pleasure to be testifying here today on behalf of the State Department regarding the various anti-terrorism bills now before you. The Tokyo Summit meeting has just come to a close and as you know, terrorism was one of the major items. Ambassador Oakley attended the Summit.

Today's hearing is timely also, because combatting terrorism has become a focus of our foreign policy and a concern of Americans at home and abroad. In just the past month alone, there have been a number of terrorist attacks involving Americans, including shootings of embassy employees in Khartoum and Sanaa.

These attacks illustrate the need to improve considerably the security of many of our embassies, as well as to upgrade the residential security of U.S. employees abroad. The number of terrorist-related incidents in recent weeks underscores the need for Congress to enact as quickly as possible legislation that would give the Department of State authority to enhance embassy security. The Administration's bill, S. 2015, and the Congressional initiatives are contributions to that effort.

The Administration's bill, S. 2015, deals primarily with the physical security aspects of our anti-terrorism effort. I wish to underscore the importance of the bill to all of us who deal with other facets of the counter-terrorism effort. The effort to improve the physical security--the inner-ring of defense, so to speak--for our personnel and our facilities is a very important part of the anti-terrorism effort. Mr. Spiers testified on that aspect of our anti-terrorism effort last week and therefore I will confine my remarks on that subject to a reaffirmation of the Administration's desire that the Committee report S. 2015 to the full Senate for consideration as quickly as possible. S. 2015 represents what the Administration considers essential in upgrading embassy security.

HR 4151, which recently passed in the House, addresses the problem of embassy security, but also includes titles that go beyond the scope of physical security. I understand that today you wish to focus on portions of the anti-terrorism legislation before your Committee that do not involve physical security.

Thus, I will limit my remarks to Titles V through XI of H.R. 4151, the omnibus anti-terrorism bill passed by the House of Representatives in March, S. 1941 introduced by Senator Denton, and S. Res. 190 introduced by Senator Specter. The omnibus House bill covers many areas which our office does not normally deal with in detail, so I have with me today officials from other offices which handle nuclear and other issues in case you have detailed questions.

Let me start with Title V of H.R. 4151, the House Bill. We do not favor the proposed "Most Wanted List" of terrorists included in Sec. 501. Regional specialists seriously question whether an official "Most Wanted List" would be an effective tool in deterring international terrorism. It might even be counter-productive because "making" the list might be regarded as a status symbol among certain groups. We prefer that the section be dropped. If it does remain, it is essential that it retain the discretion of Sec. 501 (b)(3) which provides for including individuals only if this is useful in the effort to arrest and effectively prosecute them.

The Administration endorses Sec. 503, the proposed rewards program, with proposed changes worked out by the State Department and the Drug Enforcement Agency and discussed with the Committee staff. We view the rewards program as a potentially useful tool in countering narco-terrorism.

We strongly endorse Sec. 508, which is designed to deal with persons providing terrorist-related expertise to other countries. We suggest that the language be modified to allow the Secretary of Treasury as well as the Attorney General to have the authority to investigate violations of this section. This change would also preserve the investigative authority for the Customs Services, in addition to the FBI which is already authorized.

We also believe that Sec. 509 on economic sanctions is not necessary because authority already exists.

Title VI deals with international nuclear terrorism. The U.S. has taken a leading role both in facilitating international cooperation and in establishing domestic procedures. This is certainly a critical area. We believe, however, that existing legal provisions are sufficient for us to continue in our efforts. We are concerned, in particular, that the provisions of Title VI, even though they largely duplicate existing law, would be seen by our

allies as a shift from our current cooperative efforts to a more unilateral approach. We urge the Committee to delete this title from the bill.

Title VII contains five directives to the President. We sympathize with the intent of these directives, but must point out that the most important sections of Title VII are already included in the International Security and Cooperation Act of 1985. The other sections included in Title VII, in our view, are unnecessary and seriously limit our flexibility in dealing with rapidly changing situations. We would prefer, therefore, that this Title be deleted.

Title VIII, providing for compensation of victims of terrorism is, as Mr. Spiers also testified, a provision the Administration strongly supports.

In Title IX, the Administration does not believe the additional authorization is needed for the Coast Guard. Sufficient authorization is contained in the Coast Guard Authorization Act. However, if the Senate decides to include this Title in the legislation, some improvements in the language should be made and the Administration would be glad to work with your staff on this before the markup.

Title X, establishing fellowships to help address our embassy staffing needs in the Soviet bloc countries, is a worthwhile concept. We should not raise false expectations about the possible number of fellowships--we have no idea if funding will be available.

Title XI relates exclusively to the Defense Department and it would be inappropriate for me to comment.

Turning to S. 1941, introduced by Senator Denton, I would like to start by saying the Administration shares the objective of the bill--to improve the ability of the United States to fight international terrorism. The Department, however, has problems with the bill as drafted and does not believe it currently is a desirable means of achieving our mutual goals.

By way of illustration, I would make some general observations. Sec. 2, the "Statement of Findings" in effect raises the old problem of trying to devise a suitable definition of terrorism. There are potential problems in trying to be too specific, including getting bogged down in endless debates which have tied up virtually every other effort to devise a consensus definition that provides enough flexibility.

In Sec. 3 on sanctions, I see two problems. One is dealing with the issue of identifying each state which supports terrorism. In some cases intelligence on support is more available than in others. It is not clear whether the bill intends to apply to countries which may be providing indirect support, such as assistance to countries which, in turn, more directly support terrorists.

We agree with the general concept of using economic sanctions as a potential lever against countries which support terrorism. Existing legislation, however, already gives the Administration extensive authority and needed flexibility to limit U.S. economic and commercial relations with countries supporting terrorists. We have used this authority vigorously wherever appropriate. Libya is a good example.

The International Security and Development Cooperation Act of 1985, which this Committee dealt with last year and which was signed into law in August, authorized the President to ban imports with countries supporting terrorism. Earlier legislation continues to provide similar authority for other types of sanctions covered in S. 1941. The new bill, however, would reduce the flexibility which the Administration has under existing authority. There are situations in which it may be more effective to apply sanctions in steps, rather than use up all the options at once.

Rather than take up more time with the details in this testimony, I would suggest that if the Committee is interested in pursuing the approach of S. 1941, our staffs could get together with yours to discuss this as well as the other legislation pending before you.

The other measure on which we were asked to comment is Senator Specter's S. Res. 190, which expresses the sense of the Senate that the President should call for international negotiations for the purpose of agreeing on a definition of international crime and considering making such a crime a universal crime under international law.

We share and strongly support the goal of enhanced international cooperation to fight terrorism as crime. We note however, that there already are a number of international legal instruments against terrorism, such as the 1970 Hague and 1971 Montreal conventions which are directed at terrorism against aviation, the 1973 U.N. convention on attacks against diplomats, and the 1979 U.N. convention against hostage taking. We believe that an approach aimed at specific forms of terrorist crime is a more productive way to proceed that trying to obtain international consensus on a general definition of international terrorism as a crime. The experience at the

U.N., where it took months of hard work to obtain passage of a United Nations General Assembly resolution against terrorism late last year, is an example of the difficulties in obtaining agreement on even non-binding general measures.

We strongly support, however, Senator Specter's S. 1429 which in part aimed at filling a remaining gap in our current structure of criminal jurisdiction over acts of terrorism committed against Americans abroad. It would make criminal under U.S. federal law violent terrorist attacks committed against U.S. nationals. The bill passed the Senate by a 92 to 0 vote earlier this year, but appears to be bogged down in the House. The Committee may wish to consider whether it would be appropriate to attach that bill to the omnibus legislation.

Finally, I would like to reiterate the Administration's strong support for the U.S.-U.K. Extradition Treaty. In my position, I see numerous situations in which the international effort to combat terrorism has been hampered because a nation refuses to extradite or take other actions against terrorists because they claim to have political motivations for their crimes. I also have seen situations in which we and our allies have been frustrated in bringing terrorists to justice because they have used political claims to obtain refuge.

Unfortunately, we ourselves are vulnerable to these charges, because US courts have blocked extradition of violent criminals to Great Britain because they claimed political motivation for their crimes. I would note that the statement on terrorism issued Monday by the heads of state of government of the Summit Seven Nations highlights "improved extradition procedures within due process of domestic law for bringing to trial those who have perpetrated acts of terrorism" an an important agreed counter-terrorism measure.

In conclusion, Mr. Chairman, I would like to emphasize a point which has been made before but is worth making again in the context of this hearing. The fight against the scourge of international terrorism is going to be a long and difficult one. There are dozens of terrorist groups and nearly as many varieties of terrorist crimes and attacks. There is no magic button or lever we can press. Terrorism is not a problem which easily lends itself to legislative solutions; the situations are too fluid and varied. However, there are a number of tools we try to use, including economic, political, military and legislative, and we welcome the opportunity to meet with you and try to refine and develop them. But it is important that we do certain things now. Among them is the earliest possible enactment of S. 2015 authorizing the Administration's Diplomatic Security proposal.

At this point, my colleagues and I would be pleased to answer any questions.

Prepared Statement of Stephen S. Trott

My name is Stephen S. Trott. I am the Assistant Attorney General of the Criminal Division of the United States Department of Justice. It is a pleasure for me to appear before the Senate Foreign Relations Committee today to encourage the enactment of additional legislative measures that will be beneficial in this country's efforts to thwart terrorism. Such efforts must include unilateral, bilateral, and multilateral measures.

Unilateral

While the United States has already enacted numerous measures which are of benefit in our struggle against terrorism, there still exist some gaps both in our criminal sanctions and our preventive measures. The Senate, to its credit, has already passed two important measures that should be part of any omnibus effort to fight terrorism. They are S. 1429 and S. 274.

S. 1429 will close one of the major gaps that exists in current federal law dealing with overseas terrorism. S. 1429, which was introduced by Senator Specter and which passed the Senate by a vote of 92 to 0 on February 19, 1986, would make it a federal crime for a terrorist to murder or assault United States citizens overseas. While existing federal law covers the overseas murder and assault of certain protected federal officials (e.g., the President, Congressmen, U.S. diplomats, and federal law enforcement officials), current federal law does not directly prohibit such acts against private U. S. citizens or personnel of our military services who are not attached to a

U.S. Embassy. While other federal statutes such as hostage-taking (18 U.S.C. 1203), aircraft piracy (49 U.S.C. App. 1472(i)), aircraft sabotage (18 U.S.C. 32) and murder on the high seas (18 U.S.C. 1111, 7) do protect all Americans overseas, their limited jurisdictional bases or their particular elements do not always cover all forms of terrorist violence inflicted upon our citizens overseas. S. 1429 fills a serious gap in our laws with a workable mechanism and we urge its enactment by the Congress.

S. 274, the Nuclear Power Plant Security and Anti-Terrorism Act of 1985, is a preventive measure that has likewise passed the Senate with strong bipartisan support. S. 274 would give the operators of nuclear reactors the opportunity and the responsibility to check for possible criminal history records on their employees having unescorted access in our nuclear facilities. S. 274 would require fingerprinting of such employees, and the submission of such fingerprints to the FBI for a criminal history records check. S. 274 also contains all the necessary reasonable privacy safeguards. With the tragic misfortune in the Soviet Union during the past two weeks, we are reminded that the need for the best possible security and safety at nuclear facilities cannot be overstated. S. 274 will assist in such efforts and we encourage its enactment by the Congress. In the area of domestic airport and aircraft security, the Administration on February 19, 1986, submitted separate legislation to strengthen aviation security programs. We hope that the Congress will address this important proposal on a timely basis.

The reinstitution of capital punishment in the federal system for crimes relating to murder, espionage, and treason is a priority of this Administration. The full Senate now has S. 239, which was reported favorably by the Judiciary Committee, pending before it. While the full Senate will likely consider floor amendments to S. 239 -- one of which we anticipate will be an amendment to add the death penalty to 18 U.S.C. 1203 if the death of any person results from a foreign hostage-taking situation -- we are confident that the Senate will once again produce a bill that contains the necessary procedures that will permit the constitutional imposition of a death sentence. Unfortunately, such prior bills which the Senate passed have languished in the House. Accordingly, we vigorously support prompt enactment of this important anti-terrorist legislation.

On March 18, 1986, the House passed H.R. 4151, the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. H.R. 4151 has many sections that the Administration believes will be beneficial in the fight against terrorism. It also contains some measures such as Section 501 (Most wanted international terrorist list) and Section 704 (Removal of place of birth information from passports) that in our judgment will be counterproductive and should be deleted from the bill. The Department of Justice is very supportive of Section 503 (Rewards for information relating to international narcoterrorism and drug trafficking); Section 505 (Counter-terrorism Protection Fund);

and Section 508 (Authority to control certain terrorism-related services).

One of these measures, which the Department of Justice believes could prove to be especially beneficial, is Section 508. Section 508 creates a mechanism to control the provision of certain services by Americans to the military, police, and intelligence agencies of those countries that have been designated under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) as engaging in or providing repeated support to international terrorism. (The countries currently so designated are Libya, Iran, South Yemen, Syria, and Cuba.) Section 508 is the essence of the "services" bills submitted to the 98th Congress (i.e., S. 2626 and H.R. 5613) by the President to close the gaps in federal law that came to light in the Wilson-Terpil investigations. While the Department of Justice would have preferred a limitation on the services to all branches of the foreign Government, we do agree that the military, police, and intelligence agencies are the governmental components most likely to be subverted by such countries to conduct their terrorist activities. As to police agencies, we would suggest that the legislation clearly state that it covers all police agencies within such country and not only the national police, i.e., it includes any state police, provincial police, municipal police, etc.

While we support the existing statutory language of Section 508, we strenously disagree with some of the language explaining Section 508 in House Report 99-494 accompanying H.R. 4151. The House Report has totally misconstrued the meaning of the term "willfully." In the context of this statute, willfully requires that the defendant intentionally provide the services requiring a license to an agency which he/she knows or believes to be a military, police, or intelligence component of a country that has been designated. He/she must also be generally aware of the need to obtain a license to provide the services and fail to obtain one. There is, however, no need to prove that the provider of the services knew that the services would be used to aid and abet international terrorism. The determination as to which services could aid the military, police or intelligence agencies to abet terrorism is a determination solely for the Secretary of State. Once the Secretary makes that judgment, there is no obligation in a criminal prosecution to show that a particular defendant knew for what purpose of the government wanted the services. The willful provision of services without obtaining the necessary license is the crime.

As to the services for which a license would be required, there are, in our judgment, few services that are provided to the military, police, or intelligence agencies that cannot be misused and applied for terrorist purposes. The safeguards for American businesspersons lie in the facts that (1) the number of countries

listed remains, we hope, quite limited, (2) the requirements apply only to the military, police, and intelligence components, and (3) that the perpetrator must be aware of the obligation to obtain the necessary license.

In addition, we would suggest that Section 508 include appropriate language which clearly states that authorized undercover activities by United States Government personnel and their agents are not encompassed within the scope of the provision, and that investigative authority for any offense is vested in both the Attorney General and the Secretary of the Treasury. Because the prohibited services would involve regulatory, export-type violations, which are more within the investigative expertise of the U. S. Customs Service, and could at times involve activities relating to known terrorists, which are the primary responsibility of the FBI, it is essential that both agencies have the necessary authority to investigate these cases either jointly or separately, depending upon the circumstances. We anticipate that investigative understandings between both agencies will be readily reached to ensure a coordinated law enforcement response. We would, of course, be willing to work with your staff on any changes to Section 508, as well as on the preparation of appropriate report language that will allow Section 508 to be a meaningful tool in our efforts to control terrorist activity.

Another measure which may give the United States additional tools to confront terrorism is S. 1941, the International Terrorism Deterrence Act. The Department of Justice does believe that trade sanctions play an important role in the effort to confront terrorism, and that there is a need to bring some order and coherence to the various and inconsistent provisions of current law. While supportive of the need for further study in this area, we must defer to other federal agencies on the technical adequacy of S. 1941. It should be noted that Section 503 (Prohibition on Assistance to Countries Supporting International Terrorism), Section 504 (Prohibition on Imports From and Exports to Libya), and Section 505 (Ban on Importing Goods and Service from Countries Supporting Terrorism) of the International Security and Development Cooperation Act of 1985, P.L. 99-83, 99 Stat. 220-222, August 8, 1985, were enacted by the Congress last year.

S. 1941 would require the Secretary of State to identify those foreign states that provide support for international acts of terrorism. The resulting designations would be subject to annual review and update. Only a determination that a particular nation state has ceased its support for international terrorism would qualify it for removal from the list.

Upon a finding that a state supports terrorists, the President would be required to impose a range of sanctions against it. All or a portion of sanctions could be waived if the President notifies the Congress that such a waiver would be in the national security interests of the United States.

The sanctions include a suspension of any U.S. assistance or preferential trade treatment, a mandate for U.S. representatives to oppose loans through multilateral lending institutions, and termination of access to Export-Import Bank Loans. Furthermore, the bill would require the President either to prohibit the importation of any products from that country or to impose an additional duty on their import.

S. 1941 defines "support" to include "financial or other material support, sanctuary, or training." It uses the Foreign Intelligence Surveillance Act (FISA) definition for "international terrorism" (50 U.S.C. 1801(c)).

While S. 1941 calls for international concerted action, none of its measures would apply to a nation which merely refused to help the United States accomplish one of its antiterrorist actions. Something of a more active nature is required to merit consideration to be listed.

S. 1941 does contain other provisions, such as an anti-terrorism trust fund which is funded by the extra duties imposed on the goods from countries which support terrorism. Proceeds of the trust would be used to compensate victims of terrorism and to combat terrorism (including rewards). In terms of the fund, terrorism includes domestic as well as international terrorism.

Bilateral

While the United States must do everything it can on its own to improve its capability to fight terrorism, a successful effort will require the assistance of many countries, especially our close allies. Besides improving with our allies our intelligence

gathering and sharing mechanisms, our law enforcement investigative and prosecutive efforts, and coordinated trade sanctions, we should enter into certain bilateral agreements. One area for such agreement is the area of the political offense exception to extradition.

As you well know, recent decisions of U. S. courts have blocked the extradition of persons accused or convicted of terrorists acts abroad on the ground that their violent crimes, including murder, were political offenses. Moreover, similar provisions in foreign extradition laws have frustrated efforts to bring accused terrorists to this country for trial. To correct this situation, the United States has begun negotiations with selected countries to revise our extradition treaties to preclude the use of the political offense exception in cases involving violent crime. We believe that this bilateral approach with our sister democracies to outlaw the use of violence where the ballot box allows orderly democratic change is an essential aspect of our anti-terrorist effort. The first country with which we have concluded such a revision is the United Kingdom. This Committee has been considering the ratification of the Supplementary Extradition Treaty with the United Kingdom since July 17, 1985. We appreciate the need to study the issue. But now after nearly ten months of consideration, we urge this Committee, in particular, and the Senate, in general, to give approval and its advice and consent to this important tool for fighting terrorists.

Multilateral

Agreements with our allies, while important, are not the total answer. We fully agree with the thrust of Senator Specter's S. Res. 190 calling for renewed international effort to create a crime of terrorism over which there will be universal jurisdiction akin to that which the civilized world has created for piracy. In approaching this effort, however, we should fully realize that international law evolves slowly. We cannot expect in the immediate future that a world as diverse as ours will formulate a complete agreement on the entire scope of terrorism. We therefore question whether efforts to agree on a definition of terrorism or to establish a world criminal court to try international terrorists would be productive at this time. But there may be areas of terrorism for which universal condemnation by all civilized countries is possible, and it is our hope that some movement will occur in that direction.

This completes my prepared remarks. I would be happy to answer any questions you may have.

United States Department of State

Washington, D.C. 20520

May 9, 1986

Dear Mr. Chairman:

I am writing to you to reiterate the Department of State's strong support for Title VIII of the Anti-Terrorism Act, the Victims of Terrorism Compensation Act. On behalf of Secretary Shultz, I urge that the Title be retained in the bill at markup.

Title VIII complements the Diplomatic Security Act by assuring employees that they or their families will be taken care of in the event of terrorist attacks or hostage takings. The Administration has sought this legislation three times since the end of the Iranian hostage crisis. This time, a compromise has been reached in the House on compensating the former hostages, an issue which twice previously killed the bill.

Title VIII also reestablishes and augments benefits for American employee family members and for our Foreign Service Nationals provided by the expired Hostage Relief Act of 1980.

I realize that this additional protection for family members and foreign national employees has been a cause of concern to the Committee. But we should not slight or dismiss our obligations as an employer to people put at risk of their lives and safety by their employment with the United States. Title VIII would protect directly hired employees, or individuals who provide equivalent personal services under contract to the United States, or to an instrumentality of the United States, such as an Embassy school or a commissary association. It would not cover individuals who are employed by independent contractors with the United States, e.g., construction firms building new Embassies. Thus, only individuals having an employer-employee relationship with the United States would receive coverage for themselves and their families. None of the covered employees or family members would receive benefits unless their injury resulted from hostile action that was a product of their relationship with the United States Government.

The Honorable
Richard G. Lugar,
Chairman, Senate Foreign
Relations Committee,
United State Senate.

The Department believes that this language taken from the Hostage Relief Act of 1980, provides a workable rule of reason for determining who should be covered and under what circumstances the United States should pay for injuries or death to employees or their family members. We are open to possible modifications or clarifications of the language, but would strongly oppose dropping Title VIII altogether.

We believe that dropping Title VIII would lose a rare opportunity to achieve agreement on this thorny issue. Attempts in previous Congresses to secure this legislation foundered when Executive Branch agencies could not agree on how to treat the issue. These disagreements were sometimes mirrored by differences among relevant Congressional Committees on the bill. This time around, with the unified support of Defense, Labor, CIA, OMB, and State, we have been able to avoid such difficulties. In the House, at least, there were no problems arising from the necessary committee referrals. If we can capitalize on this unanimity, we can get this bill this session.

Dropping Title VIII would mean further delay in securing hostage relief legislation, and at least another two years in which U.S. employees are asked to serve in hostile settings, with no guarantees from their employer of adequate compensation should they, or one of their family, be taken hostage, injured, or killed in a terrorist attack. Title VIII is needed; it should be kept in the Anti-Terrorism Bill.

Sincerely,

James W. Dyer
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

RESPONSES OF DEPARTMENT OF STATE TO QUESTIONS ASKED BY COMMITTEE

Question Section 802 would provide compensation for foreign national employees of the U.S. Government overseas. What is the current practice? In light of the proposed $4.4 billion security enhancement program and all of its potential future contractors and subcontractors, will this provision create a potentially huge liability?

Answer:

Foreign national employees: Foreign national employees were entitled to hostage benefits under the Hostage Relief Act of 1980. Under Section 802, they would be entitled to hostage compensation on the same basis as U.S. employees. Thus, with respect to the first part of section 802, expired benefits from the Hostage Relief Act of 1980 are being reinstated, and the only new benefits are for family members in their own right.

With respect to non-hostage situations, under current practice foreign national employees are provided benefits in case of death or disability. These benefits, however, are determined in accordance with the locally prevailing practice of the country where the injury occurs. Benefits can sometimes be comparable in scale to those provided to American employees, but in many countries such benefits are non-existent or are far below U.S. standards. Under Section 802, foreign national employees could receive benefits on the same basis as U.S. employees, regardless of local practice, in case of injury or death caused by hostile action and resulting from their relationship with the U.S. Government. We would not expect this additional coverage of foreign national employees to create significant potential liability.

Eligiblity of Contractors

Only very few persons involved in the security enhancement program would be eligible for Section 802 benefits. As discussed more fully in response to Question 5, only civil service employees, members of the uniformed services, and persons who, although not technically employees, are nonetheless effectively functioning as employees, would be eligible for compensation under Section 802. Construction contractors and subcontractors would not be entitled to Section 802 benefits. The contracts involved are usually not personal service contracts, but rather are product contracts. Moreover, the individuals working under such contracts are not effectively functioning as employees of the United States. Therefore, the security enhancement program does not entail significant additional potential liability for payment of Section 802 compensation. Persons employed by construction contractors and subcontractors would, however, normally be covered by other benefit programs in case of death or injury, for example, as persons engaged in public works within the meaning of the Defense Bases Act.

Question Do Foreign Service Nationals come under the scope of Title Eight? Please explain the program for them.

Answer: Foreign Service National employees would be covered by Title Eight, if taken hostage or if injured or killed by a hostile action that was a product of their relationship with the U.S. Government.

This coverage would apply to direct hire FSN's and to personal service contractors whose contract was with the United States Government, or an instrumentality thereof, e.g., an Embassy managed American school, or a commissary association. Coverage would not be extended to foreign national employees of organizations which are contractors to the United States Government.

Question Have you consulted with the Department of Labor on appropriate provisions of the compensation plan? What was the result?

Answer: Yes, we have consulted with the Department of Labor, which supports the bill. In an October 3 letter from to Secretary Shultz, Secretary Brock wrote: "I am pleased advise you that we believe the reported bill [Title VIII] is not objectionable to the Department of Labor." It is our understanding that Labor has reviewed the bill extensively, and concluded that nothing in Title VIII would conflict with the FECA program.

Question Are the benefits under this Title taxable? Should they be?

Answer: Yes, these benefits are taxable, and that treatment is consistent with laws applying to comparable situations.

Question Who are the benficiaries of Title VIII? Are contractors and consultants included? What about teachers at American schools or schools where the U.S. Embassy has a role in school administration? What about the families of these people? What benefits will they receive?

Answer: Four categories of persons are eligible for some compensation under Title VIII: (1) individuals in the civil service, (2) members of the uniformed services, (3) certain persons rendering personal services who are not employees, and (4) family members of persons in categories (1) - (3).

The first category covers civilian employees as broadly defined. It includes, for example, foreign service national employees and consultants serving under appointment as special government employees. The second category includes prisoners of war unless subsequent legislation is enacted providing for different treatment. The third category covers persons who are not technically employees but who nonetheless stand in an equivalent relationship such that coverage as an employee is appropriate. (As defined in the Federal Acquisition Regulations, part 37:

> An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. (37.104(c))

This third category was included in the Hostage Relief Act of 1980 in order to cover an administrator of an American School who was taken hostage at the American Embassy in Tehran. In general, employees of American Schools would be covered when the school could be considered as a U.S. Government instrumentality for purposes of this

Act, in view of the particular circumstances such as its operation as part of an Embassy compound and the U.S. Government's role in its establishment, management and operation. Employees of Commissaries would generally be covered by this category. Contractors would not be covered, where the contract is for a product rather than for services or when personnel working under the contract are not effectively functioning as employees of the United States. Construction contractors and subcontractors would not be covered for one or both of these reasons.

Finally, family members of civilian employees and family members of persons effectively functioning as employees are treated in the same manner under Title VIII, since they conceivably may be at risk in exactly the same way as those covered in the first three categories. Benefits which would be received include:

A. Hostage situation -- medical expenses and compensation, for their own captivity or as family members of a captive, and educational expenses, as detailed in the subsequent section, and

B. Non-hostage situation of hostile action -- minimum recompense for death or disability.

Question Who will determine eligibility under this program?

Answer: The President or his delegee must make a determination that an individual is in captive status in order to trigger benefits or compensation related to a hostage taking. The President or his delegee would also determine whether a hostile action was the product of an individual's relationship with the government, in order to trigger compensation for injuries or death due to terrorist action. Both provisions would be regulated in detail by agency heads.

Question Describe the program for the savings fund. Would a hostage's paycheck go to the fund or to the family?

Answer: The Secretary of the Treasury would be required to establish a savings fund to which an agency head could allot pay and allowances of an individual in captive status. Withdrawals from the fund would be subject to procedures established by the Secretary or Treasury. Family members dependent on the captive employee's salary would be protected by provisions of Section 5563 of Title 5, U.S. Code, to ensure that the family is not deprived of income while the captive employee's pay is deposited in the savings fund.

Question Does this Title provide medical benefits beyond those provided in regular insurance programs?

Answser: Yes. Medical expenses of an employee or family member that are incident to an employee's being captive will be paid "to the extent that such care ... is not covered by any Government medical or health program, or by insurance." This provision would authorize the Government to pay for expenses which exceed insurance payable ceilings, such as the ceiling on psychological counseling benefits found in most insurance policies.

Question Would this Title provide medical benefits to people not otherwise covered by insurance programs?

Answer: Yes. While it is extremely unlikely that employees serving overseas would not carry some form of medical insurance, the failure to do so would not bar them from collecting benefits were they to become hostages.

Question Do education and training benefits cover expenses incurred after a relative is taken hostage, or only for education and training programs already underway?

Answer: Payments to a spouse or child of a hostage could begin after the employee had been held for 90 days or more, whether the education or training had commenced before or after the hostage taking.

Question Is there a cap on education and training benefits for an individual family?

Answer: Payments to eligible family members are tied to the employee's period of captivity. Payment could begin only after 90 days of captivity, and would end at the close of the last semester or quarter which began during the period of captivity. Should a hostage die in captivity, eligible family members could receive payment for up to 45 months of education or training. The same 45 month limit applies for a former hostage who is unable to continue in his former occupation and needs retraining. Payment levels will be consistent with those of veterans' educational benefits under Title 38, U.S. Code.

Question Will this bill provide special benefits for uniformed members that have been assigned to embassy duty? Uniformed service members assume the risks involved in hostile action. Should they receive special treatment? What are the differences between what we provide a POW and the benefits we provide here?

Answer: We believe that uniformed and civilian service employees serving at Embassies in peacetime should have the same protections and benefits in the event of a hostage-taking or terrorist attack. Title VIII achieves this goal. The bill provides that POW's would receive these benefits unless Congress enacts subsequent legislation providing different coverage.

Question Is the proposed compensation for disability and death in addition to existing government or insurance benefits?

Answer: Section 802 authorizes the President to prescribe regulations under which these benefits may be paid, on condition that such benefits "shall be reduced by amounts payable to such individual under any other program funded in whole or in part by the United States...".

The Administration proposes to regulate this provision so that no additional benefits would arise for American employees, for whom FECA provides adequate coverage, as a consequence of the provision requiring that Section 802 benefits be reduced if other benefits are received from a Government paid program. Foreign national employees would receive benefits under workers' compensation principles, but based on their actual salaries, rather than on local practice, which might otherwise dictate inadequate compensation. Some FSN's would thus receive benefits higher than might be provided by FECA alone. Family members of employees could receive benefits under this section; since they would not receive FECA benefits, their benefit levels could rise under this Section.

Question The President's Commission recommended a payment of $12.50 a day to the Iranian Hostages. This bill contains an average per diem formula that amounts to approximately $90 a day. Where did this formula come from? Why is there such a difference between this formula and the President's Commission formula?

Answer: The Administration's original draft legislation proposed no set figure for payment of the Iranian hostages. Adminstration spokesmen indicated in House hearings that the President's Commission figure of $12.50 a day was acceptable and would be taken into account in setting a compensation figure, should the Adminstration bill become law.

Other witnesses criticized the $12.50 figure as inadequate or even insulting to the former Iranian hostages, and suggested that payments be tied to Government per diem levels. Supporters of the per diem idea do not contend that there is a logical tie between being held hostage and being paid per diem; rather, they argue that the outcome of applying the formula to the Iranian hostages is more equitable than the outcome of applying the President's Commission formula. (The worldwide average per diem treatment would grant approximately $29,000 to the former Iranian hostages, the Commission formula about $5,500.)

The Department appreciates the difficulty of reaching agreement upon any formula. We do believe that it is important to set an amount in advance, and note that the per diem formula provides an indexed compensation level that would not require case-by-case adjustment.

Question How much will the Iran hostages receive under this bill?

Answer: Hostages held 444 days plus Mr. Richard Queen would each receive $29,304. (Mr. Queen was released by the Iranians after 251 days because of worsening multiple sclerosis. The House bill specifically provides him with the full payment level.) Hostages held for shorter periods would be recompensed at the rate of approximately $66 for each day in captivity. The six Americans who were sheltered in the Canadaian embassy would be covered and would receive approximately $5,700 each.

Question How would you determine compensation for a family member taken hostage if that family member was not employed?

Answer: Section 802 would allow compensation if a family members were injured, disabled, or killed due to terrorist action that was a product of the victim's relationship with the government. Regulations for this section would be worked out between the Department of Labor and the Department of State.

Minimum recompense to family members based on workman's compensation concepts embodied in chapter 81, title 5, U.S. Code would involve at least four factors not related to salary: medical care, burial expenses, physical therapy, and vocational rehabilitation.

Beyond those factors there are several possibilities for computing the amount of compensation. One is a specified percentage of the employee's salary for permanent disability or a fixed number of weeks for the loss of an arm or other bodily member. Another alternative would be to base compensation payments to all family members of U.S. citizen employees on the same salary level, say GS-9 or GS-11. Payments to family members of foreign national employees under the flat rate system could be based on a median FSN salary level in each country such as FSN-7. Still another possibility could be based upon analogy to Social Security or insurance schedules. In any event, each agency could be made responsible for payment of benefits to its employees and respective family members under a formula prescribed by central regulations.

Question What benefits does Title VIII provide which are not covered by workman's compensation laws?

Answer: Section 801 benefits arising from hostage takings are not provided by workman's compensation laws. Section 802 benefits for injury or death arising from terrorist actions are covered by workman's compensation laws. However, Section 802 would provide benefits to family members who are not also employtees of the government, and could provide higher levels of benefit than normally available through workman's compensation, for foreign national employees injured or killed in terrorist action that was product of their relationship with the government.